IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER)
AND
SHRI GAGAN GOYAL (ACCOUNTANT MEMBER)

I.T.A No.4909/Mum/2019
(Assessment year : 2015-16)

Shri Rajesh Devraj Mehra A-703, Mary Ellan Apartments Off Caeser Road, Amboli Raheja Classic, Andheri Mumbai- 400 093 PAN : AAKPM5998D (Appellant)	vs	ITO-10(1(2), Mumbai (Respondent)

Assessee represented by	:	Shri Mitesh Mehta
Department represented by	:	Shri T Sankar, Sr, DR
Date of hearing	:	01/02/2022
Date of pronouncement	:	22/02/2022

O R D E R

Per: Gagan Goyal (AM):

This appeal has been filed by the assessee against the order dated 22/05/2019 passed by the Commissioner of Income-tax (Appeals)-17, Mumbai for the assessment year 2015-16.

2. The assessee has raised the following effective grounds of appeal:

"1. The learned assessing officer as well as CIT(A) erred in fact and on law in not allowing Derivatives F & 0 loss of Rs. 28,06,044/- and Speculation profit of Rs. 4,10,688/-.

2. The learned CIT (A) and assessing officer erred in law in not following the principles of jurisprudence to grant the justice to the assessee which is violation of the principle of natural justice.

3. The learned CIT (A) erred in law in denying lawful claim of the appellant.

4. The learned CIT (A) erred in dismissing appeal on technical ground without appreciating facts of case properly.

5. The learned CIT(A) erred in fact and on law in stating para 4.2 of order that, ".....Here, in this case, what the appellant is raising is a factual issue, which has not been correctly accounted by the Accountant, either due to oversight or due to mistake. This has not been examined either on facts or in law and thus it cannot be dealt with u/s.154 as mistake apparent from the record. Thus, the AO has justifiably declined to carry out rectification as per petition filed by the appellant." Disregarding the fact that the learned AO has already examined the said loss/profit during the assessment proceedings itself.

6. The learned CIT(A} erred in law and on fact in not understanding the fact that, the learned assessing officer has rejected 154 application for non-filing of revised computation / Return u/s. 139(5), however, he has not declined / objected claim of appellant.

7. The assessing officer erred in not following Constitution of India, and also judicial pronouncements."

3. The facts of the case in brief are that the assessee was engaged in the business of dealing and investment in shares and securities. Return for the assessment year under consideration was e-filed on 19/09/2015 declaring total income at Rs.21, 48,070/-. The case was selected for scrutiny and notices under section 143(2) & 142(1) of the Income-tax Act, 1961 were issued and served on

the assessee. In response, the assessee filed details, as called for. The assessment was completed u/s 143(3) on the returned income, i.e. Rs.21, 48,070/- only. During assessment proceedings the assessee vide letter dated: 21-11-2017 made a fresh claim before the A.O. in respect of loss in Future & Options (F&O) transactions. The assessing officer did not consider the fresh claim made during the assessment proceedings.

3.1 Subsequent to that the assessee moved an application under section 154 on 06/06/2018 claiming that the assessee had suffered loss of Rs.28, 06,044/- in F & O transactions and had earned profit of Rs.4, 10,688/- thereby incurring net business loss of Rs.23, 95,355/- which was debited to an account named "Derivatives Traders (to be reconciled) and Speculation trades (to be reconciled) grouped under loans and advances (Assets). The Assessing Officer, however, rejected the rectification application on the ground that – (i) the assessee himself has filed the return of income at Rs.21,48, 070/- and the same was assessed u/s 143(3) of the Act; (ii) the assessee had ample time to correct any information wrongly filed by him, by filing a revised return of income u/s 139(5) of the I.T. Act; and the assessee had not even furnished a revised computation of income during the assessment proceedings. The appeal filed appeal before the CIT (Appeals) did not find favour with the Ld.CIT (A).

4.. Before us, the learned AR invited our attention to the decision of the Mumbai Bench of the Tribunal in the case of Shrikant Real Estates (P) Ltd. vs. Income tax Officer reported in (2013) 22 ITR 0266 wherein it was held that e-filing of return was dependent upon the usage of software, therefore, possibility lie for occurrence of clerical errors at the time of entering the data in the electronic

form. The Ld.AR further brought to our notice Circular No.14 (XL-35) of 1955, dated 11.04.1955, issued by the Central Board of Direct Taxes. The Ld.AR also relied upon the decision of Mumbai Bench of the Tribunal in the case of Shrikant Real Estates (P) Ltd vs. ITO reported in (2013) 22 ITR 0266 wherein it was held that e-filing of return was dependent upon the usage of software, therefore, possibility lie for occurrence of clerical errors at the time of entering the data in the electronic form.

5. The learned departmental representative, on the other hand, submitted that the provisions of section 154 is essentially for the mistake apparent on the record and which must be a patent mistake and not something which can be established by long drawn process of reasoning on points on which there may be considerably two opinions. In this connection, he relied upon the decision of the Hon'ble Supreme Court in the case of Hero Cycle Pvt Ltd (1997) 228 ITR 463 (SC) wherein it was held that a point which was not examined on facts or in law cannot be dealt with as a mistake apparent from the record. The learned DR, therefore, pleaded that the appeal of the assessee deserves to be dismissed.

6. We have considered the rival submissions and perused the materials placed before us. Any rectification of mistake under section 154 of the Income-tax Act, 1961 can be sought for only when it is apparent from the record. As evident from the section, the mistake must be one which is patent, which is obvious and whose discovery is not dependent on further investigation.

7. We shall now examine as to whether the omission to claim in the original returns for the assessment year under consideration will enable the assessee to

file application under section 154 of the Income-tax Act to rectify the said omission. It is an admitted fact that the assessee did not claim loss in the original return filed by it. It is also an admitted fact that the assessment was completed based on the computation of income submitted by the assessee along with its return of income. The assessee has also not filed revised return of income under section 139(5) of the Income-tax Act to rectify the alleged omission to claim loss in his return of income.

14. Under section 139(5) of the Income-tax Act, an assessee can file a revised return before the completion of assessment or within one year from the end of the respective assessment year whichever is earlier. In the case on hand, admittedly, assessment has been completed based on the original return of income filed by the assessee. Therefore, the omission to claim loss in the original return cannot be termed as a mistake apparent on record. The question raised in this appeal relates to whether the appellant-assessee could make a claim for deduction other than by filing a revised return. The appellant sought to claim a deduction by way of a letter before the Assessing Officer. The deduction was disallowed by the Assessing Officer on the ground that there was no provision under the Income-tax Act to make amendment in the return of income by filing an application at the assessment stage without revising the return.

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15. The circular No.14(XL-35) of 1955, dated 11.04.1955 referred to by the learned representative before us has no bearing to the facts of the present case as the loss was never disclosed by the assessee in the return of income file by

him. In view of the foregoing, we are of the view that the concurrent finding of the authorities below does not suffer from any perversity or illegality and the substantial questions of law raised by the assessee in this appeal does not carry any merit. Therefore, we uphold the order of the Ld.CIT (A) and dismiss the grounds raised by the assessee.

15. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 22/02/2022

Sd/- sd/-

(VIKAS AWASTHY) (GAGAN GOYAL)
JUDICIAL MEMBER ACCOUNTANT MEMBER
Mumbai, Dt : 22nd February, 2022
Pavanan

/True copy/ Assistant Registrar / Senior Private Secretary
ITAT, Mumbai Benches