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

BEFORESHRI AMARJIT SINGH, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No.1677/Mum/2020 (A.Y 2009-10)

Tata Autocomp Systems Limited, TACO House, Damle Path, Off Law, College Road, Pune – 411004	Vs.	Deputy Commissioner of Income-tax Large Tax Payer Unit-2, 29th Floor, Center No.1, World Trade Centre, Cuffe Parade, Mumbai – 400 005
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAACT1848E		
Appellant	..	Respondent

Appellant by :	Aarthi Sathe
Respondent by :	Achal Sharma

Date of Hearing	08.03.2022
Date of Pronouncement	28.03.2022

आदेश / O R D E R

PER AMARJIT SINGH, AM:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-1, Mumbai, which in turn arises from the order passed by the A.O u/s 154 of the I.T. Act, 1961, dated 26.03.2018 for A.Y. 2009-10. The grounds of appeal are as under:

"1. Ground 1 Erroneously passing an order under section 154 of the Income-tax Act, 1961 ('the Act') beyond the limitation period

1.1. On the facts and circumstances of the case and in law, the impugned order passed under section 154 of the Act by the Learned Assessing Officer ('Ld, AO') is void ab initio as notice under section 154 of the Act was served beyond a period of 4 years from the end of the financial year in which the order sought to be rectified was passed (i.e. draft

assessment order). Also, the Learned Commissioner of Income-tax (Appeals) ['Ld. CIT(A)'] has erred in considering the period of limitation of 4 years from the end of the financial year in which the final assessment order was passed, instead of the draft assessment order.

Your Appellant prays that such rectification order be treated as null and void.

2. Ground 2: Erroneously passing a rectification order under section 154 of the Act without considering the fact that there is no mistake apparent from record.

2.1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the action of the Ld. AO in passing a rectification order under section 154 of the Act without considering the fact that there is no mistake apparent from record.

Your Appellant prays that such rectification order be treated as null and void.

3. Ground 3: Erroneously adding the profit of INR 3,67,14,142 recorded in the books of accounts on realizing from Ford Motor Company

3.1. On the facts and circumstances of the case and in law, the Ld. CJT(A) and the Ld. AO have erred in adding the profit of INR 3,67,14,142 recorded in the books of accounts on realizing from Ford Motor Company.

3.2. On the facts and circumstances of the case and in law, the Ld. CIT(A) and the Ld. AO have erred in « adding the profit of INR 3,67,14,142 without considering the fact that the entire consideration of INR 15,80,36,317 received from Ford Motor Company was duly offered to tax during the year under consideration. Further, the addition of book profit to the total income has resulted in the double taxation of same income to the extent of INR 3,67,14,142.

3.3. On the facts and circumstances of the case and in law, the Ld. CIT(A) and the Ld. AO have erred in not considering the fact that the book profit of INR 3,67,14,142 is merely an accounting entry and the same should not be considered as taxable income for the purposes of Income-tax Act.

Your Appellant prays that the additions made/confirmed by the Ld. AO/Ld. CIT(A) should be deleted.

The Appellant craves leave to add, alter, amend, withdraw, modify and/or substitute any of the above grounds of appeal."

2. Fact in brief is that return of income declaring loss of Rs.12,26,74,901/- was filed on 14.09.2010. The return of income was subject to scrutiny assessment and notice u/s 143(2) of the Act was

issued on 18.08.2010. The assessment u/s 143(3) r.w.s 144C(13) of the Act was finalized on 07.01.2014 and total income was assessed at Rs.94,39,55,433/-. Subsequently, assessing officer has passed order u/s 154 of the Act on 26.03.2018. The A.O stated in the order u/s 154 that that in the computation of income assessee added back an amount of Rs.15,80,36,317/- towards Ford settlement, sale of research and development and deducted an amount of Rs.3,67,14,142/- towards Ford settlement profit on sale of research and development and the same was allowed in scrutiny assessment. The assessee explained that consideration of Rs.15,80,36,317/- received from Ford has been fully offered to tax and the profit of Rs.3,67,14,142/- has been reduced while computing the total income. However, the A.O has not accepted the submission of the assessee stating that claim of the assessee that amount has already been offered to tax was not supported with relevant documents. Therefore, profit on sale of research and development of Rs.3,67,14,142/- was added to the total income of the assessee.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A has dismissed the appeal of the assessee retreating the facts reported by the assessing officer that the claim of the assessee on offering the same amount for tax was not supported with the relevant documents.

4. During the course of appellate proceeding before us the ld. Counsel submitted that assessee claimed deduction u/s 35(1)(iv) of the Act for the expenses incurred on engineering and design charges and such reimbursement of Rs.15,80,36,317/- received from Ford on account of engineering and design charges has been offered to tax. It is further, submitted that for the tax computation of assessment year 2009-10 the

assessee has reduced gain recorded in the books of account to the amount of Rs.3,67,14,142/- being book entry and offered to tax the entire amount of Rs.15,80,36,317/- received from Ford Motor Company. The ld. Counsel has also filed paper book comprising copies of document and detail submitted before the A.O and ld. CIT(A). The ld. Counsel has referred various pages of the paper book. She referred page No. 216 of the paper book stating that it was specifically explained before the lower authorities that reimbursement of Rs.15,80,36,317/- received from Ford on account of engineering and design charges has been offered to tax. She has also referred statement of computation of total income pertaining to A.Y. 2009-10 wherein amount received from the Ford settlement was added to the total income under the head expenses not deductible and profit on sale of R & D was also specifically reflected in the computation of total income. She vehemently contended that the relevant details and supporting document has not been considered by the lower authorities before adjudicating the appeal of assessee.

On the other hand, the ld. D.R. has supported the order of lower authorities.

5. The assessing officer has passed the order u/s 154 of the Act on 26.03.2008 and disallowed an amount of Rs.3,67,14,142/- being profit on sale of research and development stating that scientific research was done on behalf of Ford and reimbursement was made by it, and there was no element of profit in it, therefore, the entire amount was required to be offered to tax by the assessee. The assessee explained that the expenditure has been incurred by the assessee for design and development activities of auto components to be fitted in the new car which was proposed to be launched by Ford Motor Company. These expenditure have been capitalized as engineering and development cost

in the books of account of the assessee in the past years. During the respective years the assessee has claimed deduction for the above expenditure as capital expenditure incurred on scientific research as per the provision of Sec. 35(1)(iv) of the Act and has not claimed any depreciation under the provision of Sec. 32 of the I.T. Act. During the year under consideration the assessee has recovered part of the engineering and development cost amounting to Rs.15,80,36,317/- as reimbursement from Ford and profit of Rs. 3,67,14,142/- was recorded in the books of account the assessee. The assessee claimed that reimbursement of Rs.15,80,36,317/- has been fully offered to tax. The ld. CIT(A) has dismissed the appeal of the assessee stating that the amount offered for tax was not supported with the relevant document. It is observed that A.O has also stated that the contention of the assessee that amount has already been offered for tax not supported with relevant documents. We find that in the paper book the asessee has placed various documents and details stating that expenses incurred by the assessee in design and development of the auto components activity has been capitalized as engineering and development cost in the books of account in the past years and claimed deduction u/s 35(1)(iv) as capital expenditure incurred on scientific research. After taking into consideration the submission and material placed in the paper book we are of the considered view that it is appropriate to restore this issue to the fact of the A.O for deciding a de novo after examination/verification of the relevant document and detail filed by the assessee in support of its claim after affording adequate opportunity to the assessee. Therefore, this ground of appeal of the assessee is allowed for statistical purposes.

6. The Ground Nos. 1 & 2 is not pressed therefore the same stand dismissed. Ground No. 3 is allowed for statistical purposes.

7. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 28.03.2022

Sd/-	Sd/-
(AMARJIT SINGH)	(AMARJIT SINGH)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dated 28.03.2022
Rohit: PS

आदेश की प्रतिलिपि ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,
सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai