

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

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2276/Mum./2021
(Assessment Year : 2013-14)

Lalitkumar Ratanchand Chadha
Plot no.95, Chadha Building
Wadala, Mumbai 400 031
PAN – AABPC5330N

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-4(2)(2), Mumbai

..... Respondent

Assessee by : Ms. Renu Kapoor
Revenue by : Shri Mehul Jain, Sr. AR

Date of Hearing – 07.06.2022

Date of Order – 05/07/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 23/11/2021, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [*"learned CIT(A)"*], for the assessment year 2013-14.

2. The only grievance of the assessee in the present appeal is against the dismissal of its appeal by the learned CIT(A) as non-maintainable.

3. The brief facts of the case pertaining to the issue, as emanating from the record, are: The assessee is a manufacturer of dyes and chemicals and also earns income from dealing in investments and shares. For the year under consideration, the assessee e-filed his return of income on 24/09/2013, declaring total income of Rs.2,10,08,050. The Assessing Officer, vide order dated 28/01/2016, passed under section 143(3) of the Act, inter-alia, disallowed expenditure of Rs.1,58,362, under section 14A r/w rule 8D of the Income Tax Rules, 1962 (*"the Rules"*) in relation to the income which does not form part of the total income.

4. Subsequently, the assessee vide application dated 17/02/2016 filed under section 154 of the Act sought rectification of the aforesaid assessment order in respect of computation of disallowance under section 14A of the Act. Vide letter dated 14/01/2020, assessee again requested the Assessing Officer for consideration of its rectification application filed under section 154 of the Act. The said application was rejected by the Assessing Officer by merely mentioning the following by hand:

"The rectification application is rejected as it is a matter of appeal."

Being aggrieved by rejection of his rectification application, the assessee preferred appeal before the learned CIT(A).

5. The learned CIT(A), vide impugned order dated 23.11.2021, dismissed the appeal on the ground that the same is not in accordance with the provisions of the Act and thus is not maintainable, by observing as under:–

"5. In the grounds of appeal, the appellant has disputed the action of the AO in rejecting the rectification application of the assessee, requesting for deletion of the additional disallowance u/s 14A made in the assessment order, vide rectification order dated 24.02.2020. However, on perusal of the copy of the rectification order stated to have been passed by the A.O. on 24.02.2020 furnished by the assessee along with Form 35 (against which the present appeal has been preferred), it is noticed that the same does not represent an order issued u/s 154 of the Act, as claimed by the appellant. It is noticed that the same is merely a copy of the rectification application of the assessee dated 14.01.2020 on which the A.O. has merely endorsed in his handwriting on 24.02.2020 in the space available at the bottom right hand corner that the rectification application is rejected as it is a matter of appeal. It is noticed that there is no separate order passed by the A.O. u/s 154 of the Act on 24.02.2020 along with a demand notice bearing the said date.

6. Further is that no computer generated Document Identification Number (DIN) has been quoted in the body of the said document purported to be a rectification order. The CBDT Circular 19 of 2210 de 14.08.2010 issued in pursuance of provisions of section 119 of the Act, has clearly stated that communication shall be issued by the income tax authority relating to story or otherwise exemption, enquiry, investigation, verification of penalty, prosecution rectification, approval etc. to the assessee or any other person on or after the 1st day of October 2019 unless a computer generated Document identification Number (DIN) has been allotted and is duly quoted in the body of such communication. The circular further stated that any communication which is not in conformity with the same shall be treated as invalid and shall be deemed to have never been issued. In view of the same, the document furnished by the stated to be rectification order passed by the AO on 24.02.2020 cannot be on by the AO. The said document therefore does not constitute an provisions of the Act and consequently does not represent an appealable order under the provisions of section 246A of the Act. Hence, it is considered that the present appeal is not in accordance with the provisions of the Act and the same is therefore held to be not maintainable."

6. During the course of hearing, the learned Authorised Representative ("*learned A.R.*") submitted that the Assessing Officer wrongly included ineligible assets / investments in the investments, which yield tax exempt income, while computing the disallowance under section 14A r/w rule 8D vide assessment order. Accordingly, the assessee filed rectification application requesting for re-computation and deletion of additional disallowance made under section 14A of the Act. The learned A.R. further submitted that the learned CIT(A) dismissed the appeal of the assessee as not maintainable on technical grounds.

7. On the other hand, the learned Departmental Representative by vehemently relying upon the impugned order submitted that the disallowance under section 14A of the Act is not covered within the ambit of section 154 of the Act.

8. We have considered the rival submissions and perused the material available on record. The assessee being aggrieved with the incorrect computation of disallowance under section 14A of the Act sought rectification of the assessment order. In the rectification application, the assessee submitted as under:

"While going through the order it is observed that in the computation of disallowance u/s 14A your goodself has taken total investment as on 01-04-2012 of Rs.2,51,37,298/- instead of Rs.96,42,936/- (details enclosed). It seems that while calculating total investment your goodself has not reduced the following amounts since they do not yield any income and they are advances given and investment in jewellery.

	March 2013	March 2012
<i>Jewellery</i>	14,94,702	14,94,702
<i>IDFC Bond</i>	20,000	20,000
<i>L&T Infra Bond</i>	20,000	20,000
<i>Raheja Krishna Enterprise</i>	74,53,007	74,53,007
<i>Property from Fedders</i>	13,00,000	13,00,000
<i>Bramha Builder</i>	63,85,979	63,85,979
<i>The Bombay Dyeing Property</i>	1,44,83,923	25,00,000
<i>TOTAL</i>	3,11,57,611	1,91,73,688

9. As is evidence from the record, the Assessing Officer rejected the rectification application filed by the assessee by treating the issue to be an appealable issue.

10. The learned CIT(A), vide impugned order, treated such a direction passed by the Assessing Officer to be not an order passed under section 154 of the Act and thus dismissed the appeal filed by the assessee treating the same to be not in accordance with the provisions of the Act and thus not maintainable.

11. We find that as the issue pointed out by the assessee in its rectification application, deals with the correct computation of disallowance under section 14A of the Act, therefore, we deem it appropriate to restore this issue to the file of jurisdictional Assessing Officer for *de novo* adjudication after verification of all the details as may be filed by the assessee. Needless to mention that no order shall be passed without affording opportunity of hearing to the assessee. As a

result, the sole ground raised in assessee's appeal is allowed for statistical purpose.

12. In the result, appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 05/07/2022

Sd/-
S. RIFAUR RAHMAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 05/07/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai