आयकर अपीलीय अधिकरण, हैदराबाद पीठ

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No. 1690/Hyd/2018		
Assessment Year: 2011-12		
Zintec Software (P) Ltd, Hyderabad PAN:AAACZI110H	Vs.	Dy. C.I.T. Circle 17(2) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Shri K.C. Devdas, C.A	
Revenue by:	Shri Y.V.S.T. Sai, CIT(DR)	
Date of hearing:	16/08/2022	
Date of pronouncement:	17/08/2022	

ORDER

Per Laliet Kumar, J.M

This appeal filed by the assessee is directed against the order dated 6.6.2018 of the learned CIT (A)-5, Hyderabad relating to A.Y.2011-12.

2. The legal grounds raised by the assessee before us are as under:

> *"1. The Learned Commissioner of Income Tax (Appeals) failed to appreciate that the time limitation laid down under Section 154(7) applies only to amendment of any "order passed" referred to in Section 154(1)(a) and not to amendment of any intimation or deemed intimation under sub-section (1) of Section 143(1) referred to in Section 154(1) (b) and, therefore, erred in dismissing the appeal stating that the rectification application is beyond the date of limitation.*
>
> *2. Without prejudice to Ground No. 1, the Learned Commissioner of Income Tax (Appeals) is not justified in not adjudicating on the ground of*

appeal for allowance of credit for surcharge and education cess totaling to Rs. 2,82,548/- while computing MAT set off under Section 115JAA.

3. Without prejudice to Ground No. 1, the Learned Commissioner of Income Tax (Appeals) IS not justified in not adjudicating on the ground of appeal opposing increase in interest under Sections 234B and 234C by Rs. 42,803/-.

4. For these grounds and for such other grounds that may be adduced at the time of hearing of the appeal, the issues raised in this appeal may be considered".

3. In this regard, the learned AR submitted that it was the case of the assessee that the learned CIT (A) dismissed the appeal of the assessee on the ground that no rectification order is permissible to be passed under Income Tax Act 1961 after passage of 4 years from the date of passing of the order under section 154(7). The learned AR drew our attention to the intimation issued by the Department in this regard, which was issued under section 143(1) of the Act . It was submitted by the learned AR that in law, there is a distinction between the intimation u/s 143(1) and the assessment order passed u/s 143(3) of the Act. The restriction under section 154(7) was only provided against the assessment order and it is not applicable to intimation. Our attention was drawn to provisions of section 154 of the I.T. Act, 1961 which reads as under:

Rectification of mistake.

[54]**154.**[55][(1) With a view to rectifying any mistake apparent from the record[56] an income-tax authority referred to in section 116 may,—

(*a*)	amend any order[56] passed by it under the provisions of this Act ;
[57][(*b*)	amend any intimation or deemed intimation under sub-section (1) of section 143;]]
[58][(*c*)	amend any intimation under sub-section (1) of section 200A;]
[59][(*d*)	amend any intimation under sub-section (1) of section 206CB.]

[60][(1A) Where any matter[61] has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend

the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.]

(2) Subject to the other provisions of this section, the authority concerned—

(*a*)	may make an amendment under sub-section (1) of its own motion, and
(*b*)	shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee [62][or by the deductor] [63][or by the collector], and where the authority concerned is the [64][***] [65][Commissioner (Appeals)], by the [66][Assessing] Officer also.

[67][* * *]

(3) An amendment, which has the effect of enhancing an assessment[68] or reducing a refund or otherwise increasing the liability of the assessee [69][or the deductor] [70][or the collector], shall not be made under this section unless the authority concerned has given notice to the assessee [69][or the deductor] [70][or the collector] of its intention so to do and has allowed the assessee [69][or the deductor] [70][or the collector] a reasonable opportunity of being heard.

(4) Where an amendment is made under this section, an order shall be passed in writing by the income-tax authority concerned.

[71][(5) Where any such amendment has the effect of reducing the assessment or otherwise reducing the liability of the assessee or the deductor [72][or the collector], the Assessing Officer shall make any refund which may be due to such assessee or the deductor [72][or the collector].]

(6) Where any such amendment has the effect of enhancing the assessment[73] or reducing a refund [74][already made or otherwise increasing the liability of the assessee or the deductor [75][or the collector], the Assessing Officer shall serve on the assessee or the deductor [75][or the collector], as the case may be] a notice of demand in the prescribed form specifying the sum payable[76], and such notice of demand shall be deemed to be issued under section 156 and the provisions of this Act shall apply accordingly.

(7) Save as otherwise provided in section 155 or sub-section (4) of section 186[77] no amendment under this section shall be made after the expiry of four years [78][from the end of the financial year in which the order[79] sought to be amended was passed.]

[80][(8) Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made by the assessee [81][or by the deductor] [82][or by the collector] on or after the 1st day of June, 2001 to an income-tax authority referred to in sub-section (1), the authority shall pass an order, within a period of six months from the end of the month in which the application is received by it,—

(*a*)	making the amendment; or
(*b*)	refusing to allow the claim.]

4. The learned AR further submitted that the Hon'ble Supreme Court in the case of Rajesh Javari Stock Brokers (P) Ltd reported in (2007) 161 Taxmann 316 had categorically culled out the distinction between the intimation and the assessment order by observing as under :

> *13. One thing further to be noticed is that intimation under section 143(1)(a) is given without prejudice to the provisions of section 143(2).*

Though technically the intimation issued was deemed to be a demand notice issued under section 156, that did not per se preclude the right of the Assessing Officer to proceed under section 143(2). That right is preserved and is not taken away. Between the period from 1-4-1989 to 31-3-1998, the second proviso to section 143(1)(a), required that where adjustments were made under the first proviso to section 143(1)(a), an intimation had to be sent to the assessee notwithstanding that no tax or refund was due from him after making such adjustments. With effect from 1-4-1998, the second proviso to section 143(1)(a) was substituted by the Finance Act, 1997, which was operative till 1-6-1999. The requirement was that an intimation was to be sent to the assessee whether or not any adjustment had been made under the first proviso to section 143(1) and notwithstanding that no tax or interest was found due from the assessee concerned. Between 1-4-1998 and 31-5-1999, sending of an intimation under section 143(1)(a) was mandatory. Thus, the legislative intent is very clear from the use of the word "intimation" as substituted for "assessment" that two different concepts emerged. While making an assessment, the Assessing Officer is free to make any addition after grant of opportunity to the assessee. By making adjustments under the first proviso to section 143(1)(a), no addition which is impermissible by the information given in the return could be made by the Assessing Officer. The reason is that under section 143(1)(a) no opportunity is granted to the assessee and the Assessing Officer proceeds on his opinion on the basis of the return filed by the assessee. The very fact that no opportunity of being heard is given under section 143(1)(a) indicates that the Assessing Officer has to proceed accepting the return and making the permissible adjustments only. As a result of insertion of the Explanation to section 143 by the Finance (No. 2) Act of 1991 with effect from 1-10-1991, and subsequently with effect from 1-6-1994, by the Finance Act, 1994, and ultimately omitted with effect from 1-6-1999, by the Explanation as introduced by the Finance (No. 2) Act of 1991 an intimation sent to the assessee under section 143(1)(a) was deemed to be an order for the purposes of section 246 between 1-6-1994, to 31-5-1999, and under section 264 between 1-10-1991, and 31-5-1999. It is to be noted that the expressions "intimation" and "assessment order" have been used at different places. The contextual difference between the two expressions has to be understood in the context the expressions are used. Assessment is used as meaning sometimes "the computation of income", sometimes "the determination of the amount of tax payable" and sometimes "the whole procedure laid down in the Act for imposing liability upon the tax payer". In the scheme of things, as noted above, the intimation under section 143(1)(a) cannot be treated to be an order of assessment. The distinction is also well brought out by the statutory provisions as they stood at different points of time. Under section 143(1)(a) as it stood prior to 1-4-1989, the Assessing Officer had to pass an assessment order if he decided to accept the return, but under the amended provision, the requirement of passing of an assessment order has been dispensed with and instead an intimation is required to be sent. Various circulars sent by the Central Board of Direct Taxes spell out the intent of the Legislature, i.e., to minimize the

departmental work to scrutinize each and every return and to concentrate on selective scrutiny of returns. These aspects were highlighted by one of us (D.K. Jain J) in Apogee International Ltd. v. Union of India [1996] 220 ITR 248 (Delhi). It may be noted above that under the first proviso to the newly substituted section 143(1), with effect from 1-6-1999, except as provided in the provision itself, the acknowledgement of the return shall be deemed to be an intimation under section 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him. It is significant that the acknowledgement is not done by any Assessing Officer, but mostly by ministerial staff. Can it be said that any "assessment" is done by them ? The reply is an emphatic "no". The intimation under section 143(1)(a) was deemed to be a notice of demand under section 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. And nothing more can be inferred from the deeming provision. Therefore, there being no assessment under section 143(1)(a), the question of change of opinion, as contended, does not arise.

4. Further The statute is required to be read, as it is , in favour of the assessee and against the Revenue, by following the literal/ strict interpretation of statute . On merit, it was submitted that the assessee is entitled to the adjustment as per section 115JB of the Act and eligible for MAT credit under the Act.

5. He accordingly submitted that the learned CIT (A) is not justified in dismissing the appeal of the assessee.

6. On the other hand, the learned DR submitted that the period of limitation provided u/s 154 of the Act is only for rectification and the order passed by the learned CIT (A) is correct as the application for rectification was passed beyond the period of 4 years. The learned DR also submitted that if by the logic of the assessee, the intimation is not an order, then no appeal should lie against the intimation before the learned CIT (A).

7. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We find the learned CIT (A) in para 6 of the order has observed as under:

> *"6. The Decision:*
> *The appeal originates from the order of the CPC dated 27.03.2017 pertaining to the rectification request filed by the appellant on 08.03.2017, with regard to the order of CPC in order no. CPC/1112/16/11 12874011 dated 28.01.2012. The order of the CPC pertains to A.Y. 2011-12, the return of which was filed on 30.11.2011.*
>
> *The order was passed in F.Y. 2011-12, the rectification of the same has to be filed within four years i.e., till 3Ist March, 2016, whereas the rectification application was filed on 06.03.2017. Therefore, the date of rectification application itself is out of time as per the provisions of section 154(7) of the Income Tax Act wherein the Amendment to the order of CPC dated 28.01.2012 can only be made before the expiry of four years from the end of the Financial Year in which the order has been passed. Therefore, the rectification application itself is out of time. Therefore, there is no cause of appeal on an infructuous application. In view of the same, the appeal is dismissed accordingly and the ground No.1 and the consequent grounds 2 and 3 are dismissed".*

8. From a perusal of the above, it is abundantly clear that the learned CIT (A) relied upon section 154(7) of the Act to deny rectification of the order passed by the CPC u/s 143(1) of the Act. The rectification of a mistake apparent from the record is required to be made by the Income Tax Authorities u/s 154 of the Act either suo moto or on the application of assessee. The limitation for rectification of the apparent mistake has been provided by the Act for a period of 4 years u/s 154(7) of the Act. Though under section 154(7) no separate limitation period had been provided for rectification of intimation, as in this section only "order" had been used, however, the order used in this subsection, in our opinion, shall include the intimation issued under section 143 (1) of the Act . Though intimation under section 143(1) is not an assessment order but nonetheless it is an order for all purposes under the act including under section 246 of the Act. The intimation is nothing but finalization of computation based on the return of income filed by the assessee without providing the opportunity of hearing to the assessee with the limited power to the CPC as provided by the act. But nonetheless

based on this intimation/order the refunds/demand are raised by the tax authorities. The intimation may not be the assessment order but for all purposes it will be an order under the Act, therefore the limitation provided for rectification of intimation would only be four years, as in the case of order. However, if we accept the logic, that no limitation has been provided u/s 154(7) of the Act for the purpose of rectification then sequel to that would be that Assessing Officer be in liberty to rectify the intimation either Suo-moto or on the application even after a period of 4 years. That cannot countenance. As it would lead to unintended results by conferring the powers to Assessing Officer to rectify any mistake apparent from record in respect of intimation beyond a period of 4years.

9. The learned AR submitted during the course of argument that the plenary literal interpretation is required to be given to the statute in the case of unambiguity. However, we disagree with the interpretation as canvased by the learned AR for the assessee. In a recent decision the Hon'ble Supreme Court in the case of Eera vs. State (Govt. of NCT of Delhi) reported in (2017) 15 SCC 133 has laid down the parameters of creative interpretation. The sum and substance of the creative interpretation was that literal interpretation is to be avoided if it leads to an absurdity. The interpreting authority is required to think what was the purpose for which the statute was enacted and shall keep think like a legislature and find out what the statute wanted to correct/address the issues. After understanding the statute in the above manner the statute is to interpretated and decide the issue. The relevant portion of the order read as under:

21. Instances of creative interpretation are when the Court looks at both the literal language as well as the purpose or object of the statute in order to better determine what the words used by the draftsman of legislation mean. In D.R. Venkatachalam v. Deputy Transport Commissioner[1977] 2 SCC 273, an early instance of this is found in the concurring judgment of Beg, J. The learned Judge put it rather well when he said:

"It is, however, becoming increasingly fashionable to start with some theory of what is basic to a provision or a chapter or in a statute or even to our Constitution in order to interpret and determine the meaning of a particular provision or rule made to sub-serve an assumed "basic" requirement. I think that this novel method of construction puts, if I may say so, the cart before the horse. It is apt to seriously mislead us unless the tendency to use such a mode of construction is checked or corrected by this Court. What is basic for a section or a chapter in a statute is provided: firstly, by the words used in the statute itself; secondly, by the context in which a provision occurs, or, in other words, by reading the statute as a whole; thirdly, by the preamble which could supply the "key" to the meaning of the statute in cases of uncertainty or doubt; and, fourthly, where some further aid to construction may still be needed to resolve an uncertainty, by the legislative history which discloses the wider context or perspective in which a provision was made to meet a particular need or to satisfy a particular purpose. The last mentioned method consists of an application of the Mischief Rule laid down in Heydon's case long ago." [para 28]

22. In the celebrated judgment of Reserve Bank of India v. Peerless General Finance & Investment Co. Ltd. and Others, [1987] 1 SCC 424, O. Chinnappa Reddy, J. stated:-

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression "Prize Chit" in Srinivasa [(1980) 4

SCC 507 : (1981) 1 SCR 801 : 51 Com Cas 464] and we find no reason to depart from the Court's construction." [para 33]

23. Indeed, the modern trend in other Commonwealth countries, including the U.K. and Australia, is to examine text as well as context, and object or purpose as well as literal meaning. Thus, in Oliver Ashworth Ltd. v. Ballard Ltd., [1999] 2 All ER 791, Laws L.J. stated the modern rule as follows:

"By way of introduction to the issue of statutory construction I should say that in my judgment it is nowadays misleading - and perhaps it always was - to seek to draw a rigid distinction between literal and purposive approaches to the interpretation of Acts of Parliament. The difference between purposive and literal construction is in truth one of degree only. On received doctrine we spend our professional lives construing legislation purposively, inasmuch as we are enjoined at every turn to ascertain the intention of Parliament. The real distinction lies in the balance to be struck, in the particular case, between the literal meaning of the words on the one hand and the context and purpose of the measure in which they appear on the other. Frequently there will be no opposition between the two, and then no difficulty arises. Where there is a potential clash, the conventional English approach has been to give at least very great and often decisive weight to the literal meaning of the enacting words.

This is a tradition which I think is weakening, in face of the more purposive approach enjoined for the interpretation of legislative measures of the European Union and in light of the House of Lords' decision in Pepper (Inspector of Taxes) v. Hart [1993] 1 All E. R. 42, [1993] A.C 593. I will not here go into the details or merits of this shift of emphasis; save broadly to recognise its virtue and its vice. Its virtue is that the legislator's true purpose may be more accurately ascertained. Its vice is that the certainty and accessibility of the law may be reduced or compromised. The common law, which regulates the interpretation of legislation, has to balance these considerations." And in R. (Quintavalle) v. Secretary of State for Health, [2003] 2 All E.R.113, Lord Steyn put it thus:

"On the other hand, the adoption of a purposive approach to construction of statutes generally, and the 1990 Act in particular, is amply justified on wider grounds. In Cabell v Markham [1945] 148 F 2d 737 at 739 Learned Hand J explained the merits of purposive interpretation:

'Of course it is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract, or anything else. But it is one of the surest indexes of a mature developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.' The pendulum has swung towards purposive methods of construction. This change was not initiated by the teleological approach of European Community jurisprudence, and the influence of European legal culture generally, but it has been accelerated by European ideas: see, however, a classic early statement of

the purposive approach by Lord Blackburn in River Wear Comrs v Adamson [1877] 2 App Cas 743 at 763, [1874-80] All ER Rep 1 at 11. In any event, nowadays the shift towards purposive interpretation is not in doubt. The qualification is that the degree of liberality permitted is influenced by the context, e.g. social welfare legislation and tax statutes may have to be approached somewhat differently. For these slightly different reasons I agree with the conclusion of the Court of Appeal that s 1(1) of the 1990 Act must be construed in a purposive way." (at 122, 123)66 We find the same modern view of the law in CIC Insurance Limited v. Bankstown Football Club Limited, F.C. [1997] 187 CLR 384, where the High Court of Australia put it thus:

In a recent judgment by a 7 Judge Bench of this Court , the majority, speaking through Lokur, J., referred to the aforesaid judgment with approval. See Abhiram Singh v. C.D. Commachen - 2017 (2) SCC 629 at Para 37.

"It is well settled that at common law, apart from any reliance upon 15AB of the Acts Interpretation Act 1901 (Cth), the court may have regard to reports of law reform bodies to ascertain the mischief which a statute is intended to cure. [Black-Clawson International Ltd. v PapierwerkeWaldhof-Aschaffenburg [1975] UKHL 2; [1975] AC 591 at 614, 629, 638; Wacando v. The Commonwealth [1981] HCA 60; (1981) 148 CLR 1 at 25-26; Pepper v Hart [1992] UKHL 3; [1993] AC 593 at 630.]. Moreover, the modern approach to statutory interpretation (a) insists that the context be considered in the first instance, not merely at some later stage when ambiguity might be thought to arise, and (b) uses "context" in its widest sense to include such things as the existing state of the law and the mischief which, by legitimate means such as those just mentioned, one may discern the statute was intended to remedy [Attorney-General v Prince Ernest Augustus of Hanover [1957] AC 436 at 461, cited in K & S Lake City Freighters Pty Ltd v Gordon & Gotch Ltd [1985] HCA 48; (1985) 157 CLR 309 at 312, 315.]. Instances of general words in a statute being so constrained by their context are numerous. In particular, as McHugh J A pointed out in Isherwood v Butler Pollnow Pty Ltd. [(1986) 6 NSWLR 363 at 388.], if the apparently plain words of a provision are read in the light of the mischief which the statute was designed to overcome and of the objects of the legislation, they may wear a very different appearance. Further, inconvenience or improbability of result may assist the court in preferring to the literal meaning an alternative construction which, by the steps identified above, is reasonably open and more closely conforms to the legislative intent. [Cooper Brookes (Wollongong) Pty Ltd. v. Federal Commissioner of Taxation [1981] 147 CLR 297 at 320-321]."

24. It is thus clear on a reading of English, U.S., Australian and our own Supreme Court judgments that the 'Lakshman Rekha' has in fact been extended to move away from the strictly literal rule of interpretation back to the rule of the old English case of Heydon, ***where the Court must have recourse to the purpose, object, text, and context of a particular provision before arriving at a judicial result. In fact, the wheel has turned full circle****.*

It started out by the rule as stated in 1584 in Heydon's case, which was then waylaid by the literal interpretation rule laid down by the Privy Council and the House of Lords in the mid 1800s, and has come back to restate the rule somewhat in terms of what was most felicitously put over 400 years ago in Heydon's case."

10. In the present case, if we look into the purpose, object, text, and context of section 154(7) ,then it would be clear that the purpose of providing limitation of 4 years was to give certainties and finality to the order passed by the CPC/A.O. If we read that the limitation provided under section 154(7) is not be available in the case of passing of any intimation to rectify the order, then chaos would happen , and unlimited power would be available to the Assessing Officer/CPC to rectify the mistake even after the lapse of 4 years. In the light of the above, we are of the opinion that limitation for rectification under 154(7) is 4years even for intimation also.

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

Order pronounced in the Open Court on 17th August, 2022.

Sd/-	**Sd/-**
(R.K PANDA) **ACCOUNTANT MEMBER**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated August, 2022.

Vinodan/sps

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5	DR, ITAT Hyderabad Benches
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By Order