

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL "A"
BENCH, PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपीलसं. / ITA No.1358/PUN/2018
निर्धारणवर्ष / Assessment Year : 2011-12

Shri Jaydeep Pukhraj Jain, 'White House' 182, Sadashiv Peth Pune, Pune – 411030. PAN: AFAPJ 9915 N	Vs .	The Income Tax Officer, Ward-3(2), Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri S.N.Puranik – AR
Revenue by	Shri Arvind Desai – DR
Date of hearing	12/08/2022
Date of pronouncement	29/08/2022

आदेश/ ORDER

Per S.S.Godara, JM:

This assessee's appeal for Assessment Year 2011-12 is directed against the Commissioner of Income Tax(Appeals)-4, Pune's order dated 28.02.2017 passed in appeal no.PN/CIT(A)-4/ITO, Ward 3(2), Pune/344, 2014-15/758, in proceedings u/s.154 of the Income Tax Act, 1961 [in short "the Act"].

Heard both the parties.

2. We note at the outset that the Assessing Officer's section 154 rectification in issue dated 19.05.2014; as upheld in the CIT(A)'s order and forming the assessee's solitary substantive grievance herein; reads as follows:

"The addition of Rs.1,06,57,715/- was made as confirmation were not produced on record despite being directed to do so from time to time. It is not clear as to why and how these credit have remain outstanding from last many

years. As such, these credits appears to have turned into non payable status now assessee claims these credits are genuine, they appear static for many years. A character of benefit is imprinted on such receipts now, hence the same are considered as income in A.Y. 2011-12 while framing order u/s 143(3) dated 30/03/2014. The same were considered as taxable u/s 68. However the undersigned intended to add the same as benefit in A.Y. 2011-12 considering their non payable status. Hence, the order u/s 143(3) is rectified and addition is made u/s 28(iv) r.w.s 41(1) instead of section 68 as stated in order u/s 143(3) erroneously.”

3. Suffice to say, it has come on record that the Assessing officer had earlier made section 68 addition of Rs.1,06,57,715/- in his section 143(3) assessment; which in turn, has been converted to income taxable under section 28(IV) read with section 41(1) of the Act. We observe in this factual backdrop that such a course of action is not available with the Assessing Officer as the same amounts to re-visiting the earlier findings by a long drawn process. We thus reject Revenue's vehement arguments supporting the impugned rectification in light of hon'ble apex court's landmark decision in T.S.Balaram Vs. Volkart Brothers [1971] 82 ITR 50 (SC) holding that sec 154 rectification is permissible in an instance of an obvious or patent mistake only. The impugned rectification is annulled for this precise reason alone.

All other pleadings stand rendered academic.

4. This assessee's appeal is allowed in above terms.

Order pronounced in the open Court on 29th August, 2022.

Sd/-
(DR. DIPAK P. RIPOTE
ACCOUNTANT MEMBER

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29th Aug, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.