

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'C(SMC)' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 222 /KOL/ 2014
Assessment Year: 2005-2006**

Smt. Chetna Jain,.....Appellant
27A, Camac Street,
Kolkata-700 016
[PAN : AERPJ 6519 N]

-Vs.-

Deputy Commissioner of Income Tax,.....Respondent
Central Circle-XI, Kolkata,
Aayakar Bhawan Poorva,
110, Shantipally,
Kolkata-700 107

Appearances by:

Shri Vikash Surana, FCA, for the assessee

Mrs. Sarbari Mukhopadhyay, Addl. CIT, D.R., for the Department

Date of concluding the hearing : August 01, 2016

Date of pronouncing the order : August 05, 2016

O R D E R

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), Central-1, Kolkata dated 18.11.2013 whereby he upheld the order passed by the Assessing Officer under section 154 rejecting the application of the assessee claiming credit for TDS of Rs.3,61,059/- by way of rectification.

2. The assessee in the present case is an individual, who filed her return of income for the year under consideration on 11.07.2005 declaring total income of Rs.48,22,770/-. The said return was processed by the Assessing Officer under section 143(1) on 07.09.2006. While processing the return of the assessee, the credit for advance tax amounting to Rs.2,70,000/-, self-assessment tax amounting to Rs.84,373/- and TDS amounting to Rs.3,61,059/- was not given by the

Assessing Officer. The assessee, therefore, filed an application under section 154 claiming credit for the said amounts by way of rectification. On the basis of the original challans filed by the assessee as proof of payment of advance tax of Rs.2,70,000/- and self-assessment tax of Rs.84,373/-, the claim of the assessee for credit of the said amounts was allowed by the Assessing Officer and the intimation issued under section 143(1) was rectified by him to that effect. The claim of the assessee for credit of TDS amounting to Rs.3,61,059/-, however, was not accepted by the Assessing Officer on the ground that the relevant TDS as per the certificate filed by the assessee was related to assessment year 2004-05. The Assessing Officer, therefore, held that there was no mistake in disallowing the credit for TDS while processing the return of income of the assessee under section 143(1) and the application of the assessee seeking rectification on this issue was rejected by him vide his order dated 12.03.2012 passed under section 154.

3. Against the order passed by the Assessing Officer under section 154, an appeal was preferred by the assessee before the Id. CIT(Appeals) and after considering the submissions made by the assessee as well as material available on record, the Id. CIT(Appeals) upheld the order passed by the Assessing Officer under section 154 on the issue relating to the credit for TDS holding that the issue as to whether the credit for TDS was available for AY 2004-05 or 2005-06 was a debatable issue, the rectification on which was beyond the scope of section 154. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. The Id. counsel for the assessee has submitted that the assessee is an Insurance Agent and the commission income is being declared by her consistently on cash basis. He has submitted that even though the TDS amount in question was pertaining to the commission income accrued to the assessee in financial year 2003-04

relevant to assessment year 2004-05 as mentioned in the relevant TDS certificate, the said commission income was actually offered by the assessee in the year under consideration, i.e. AY 2005-06 on receipt basis and the assessee, therefore, was entitled to claim credit for the same in AY 2005-06. In support of this contention, he has relied, inter alia, on the Third Member decision of Chandigarh Bench of this ITAT in the case of Shri Pardeep Kumar Dhir -vs.0 ACIT reported in 107 ITD 118. In the said case, the issue referred to Third member under section 255(4) was whether the credit for the tax deducted at source in the previous year is to be allowed in the assessment year relevant to the year in which deduction has been made or in the year in which the income is assessable to tax. It is thus clear that the similar issue as involved in the present case was referred to Third Member in the case of Shri Pardeep Kumar Dhir (supra) as there was a difference of opinion between the two Members of the Division Bench of the Tribunal on this issue and the fact that there was such a difference of opinion between the two Members of the Tribunal is sufficient to show that this issue was highly debatable on which two opinions were possible. I, therefore, find myself in agreement with the Id. CIT(Appeals) that the rectification on such debatable issue as sought by the assessee by way of application for rectification was beyond the scope of section 154. The impugned order of the Id. CIT(Appeals) on this issue is, therefore, upheld dismissing the appeal of the assessee.

5. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on August 05, 2016.

**Sd/-
(P.M. Jagtap)
Accountant Member**

Kolkata, the 5th day of August, 2016

*Copies to : (1) Smt. Chetna Jain,
27A, Camac Street,
Kolkata-700 016*

**(2) Deputy Commissioner of Income Tax,
Central Circle-XI, Kolkata,
Aayakar Bhawan Poorva,
110, Shantipally,
Kolkata-700 107**

- (3) Commissioner of Income Tax (Appeals), Central-1, Kolkata;
(4) Commissioner of Income Tax- ,
(5) The Departmental Representative
(6) Guard File

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.