IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.35/Kol/2022
Assessment Year: 2014-15

Adi Narayan Gupta (PAN:AASPG3101C)	**Vs.**	**Deputy Commissioner of Income Tax, Central Circle-4(2), Kolkata.**
(Appellant)		**(Respondent)**

Present for:
Appellant by : Shri Subhash Agarwal & Siddharth Agarwal, Advocates
Respondent by : Smt. Ranu Biswas, Addl. CIT, DR

Date of Hearing : 06.06.2022
Date of Pronouncement : 10.06.2022

O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against the order of ld. CIT(A), Kolkata-21 Appeal No. ITBA/APL/S/250/2021-22/1037822452(1) dated 15.12.2021 for A.Y. 2014-15 passed against the assessment order u/s.154 r.w.s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by ACIT, Central Circle-4(2), dated 10.03.2017.

2. Grounds of appeal taken by the assessee read as under:

"1. For that the order passed by the Ld. CIT(A) NFAC on 15-12-2021 against the Appeal No.CIT(A), Kolkata-21/11201/2016-17 is unwarranted, arbitrary, invalid and bad-in-law, in so far as they are against the interest of the appellant Company.

2. For that the Ld. Commissioner appeals erred in law as well as in facts of the case by confirming/dismissing the appeal of the assessee against the additions/disallowances made by Ld. ACIT Central Circle 4(2), Kolkata, amounting to Rs.19,50,828/-, claimed by the assessee as expenses on account of interest paid to various loan creditors.

3. For that the Ld. Commissioner appeals erred in law as well as in facts of the case by confirming the disallowances of RS.19,50,828/- disallowed by Ld. ACIT Central Circle 4(2)/Kolkata on the ground that the nexus between

the income earned and expenditure incurred has not been demonstrated ignoring the submission of the assessee.

4. For that your appellant craves leave to add, amend, rectify, delete, withdraw an or otherwise modify all or any of the ground and/or to adduce evidence on or before the final hearing."

3. Brief facts of the case are that assessee filed his return of income on 23.09.2011 which was subsequently revised on 25.11.2014 reporting a total income of Rs.16,89,900/-. The assessment was completed u/s. 143(3) of the Act vide order dated 20.10.2016 assessing the total income at Rs.78,81,467/- wherein deduction of Rs.60,60,213/- in respect of interest expenses claimed u/s. 57(iii) of the Act was disallowed and added back since the assessee failed to substantiate that this expenditure has been incurred wholly and exclusively for earning of income under the head "Income from Other Sources". Subsequently, assessee filed an application u/s. 154 of the Act for rectification of mistake by claiming that there is a mistake apparent from record in the assessment order passed u/s. 143(3) of the Act dated 20.10.2016, wherein the assessee had paid interest on unsecured loans for Rs.60,60,213/- and received interest income of Rs.19,50,828/- and has also received interest of Rs.2,47,885/- on the capital invested in partnership firm. Thus, the assessee through his application for rectification u/s. 154 of the Act claimed that interest expenses to the extent of Rs.41,18,385/- i.e. (Rs.60,60,213 - Rs.19,50,828 - Rs.2,47,885) only should be disallowed. The Ld. AO rejected the application for rectification by holding that there is no connection of interest expenses of Rs.60,60,213/- with the income derived under the head "Income from Other Sources" which has been rightly disallowed and added back to the total income of the assessee. He further noted that in the course of assessment, assessee had never claimed or never substantiated any relation between the interest expenses incurred and the interest income earned. Accordingly, Ld. AO held that there is no

mistake apparent from record and disposed of the petition. Aggrieved, assessee went into appeal before the Ld. CIT(A).

4. During the first appeal, assessee submitted that he was eligible for the netting off of the interest expenses and the income. Assessee submitted that the crux of the problem lies in the fact that whether the unsecured loans taken in earlier years as well as during the year have been utilized in investment as capital in the partnership firm. The assessee made submissions to justify that the part of interest paid on loans have been correctly claimed as deduction against the interest received from the partnership firm and submitted his explanation along with supporting documents. In the course of first appellate proceedings, assessee also submitted that it is difficult to find direct co-relation between the amount of unsecured loan taken and invested in the partnership firm due to high volume of transitions. However, considering the difference between opening and closing balance of capital of the assessee in the partnership firm, it was submitted that it can be safely assumed that the part of unsecured loans was invested in the partnership firm for earning income. After considering this submission, ld. CIT(A) held that these do not demonstrate any mistake which is apparent from record and that all the submissions and explanations given by the assessee require verifications and investigations and are subject matter of debate. He held that considering the issue u/s. 154 of the Act at the first appellate stage on the basis of submission made by the assessee will tantamount to reopening and revising the assessment made by the Ld. AO. Aggrieved, the assessee is in appeal before the Tribunal.

5. Ld. Counsel for the assessee Shri Subhash Agarwal and Siddharth Agarwal, Advocates and Smt. Ranu Bisawas, Ld. Sr. DR on behalf of the revenue appeared before us. Ld. Counsel for the assessee reiterated his

submissions made before the Ld. CIT(A) along with paper book placed on record. Ld. Counsel made elaborate explanations to substantiate his claim of netting off of interest expenses with the income earned to justify his claim made u/s. 57(iii) of the Act with detailed line of arguments.

5.1 Ld. Sr. DR Smt. Ranu Biswas vehemently argued and opposed the submissions made by the assessee and pointed out that the elaborate discussion made by the ld. Counsel itself demonstrates that there is nothing which is apparent from record tantamounting to a mistake rectifiable u/s. 154 of the Act.

5.2 Before adverting further on the issue, we would like to refer to section 154 of the Act which is reproduced as under:

> '154. Rectification of mistake 2
> (1) [3] With a view to rectifying any mistake apparent from the record an income- tax authority referred to, in section 1 16 may,-
> (a) amend any order passed by it under the provisions of this Act;
> (b) amend any intimation sent by it under sub- section (1) of section 143, or enhance or reduce the amount of refund granted by it under that sub- section.]
> (1A) [4] Where any matter 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 , and where the authority concerned is the [5] Deputy Commissioner (Appeals)] or the Commissioner (Appeals)], by the [2] Assessing] Officer also. [3] Omitted by the Finance Act, 1994 , w. e. f. 1- 6- 1994 .]
> (3) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee 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.
> (5) Subject to the provisions of section 241, where any such amendment has the effect of reducing the assessment, the [4] Assessing] Officer shall make any refund which may be due to such assessee.
> (6) Where any such amendment has the effect of enhancing the assessment or reducing a refund already made, the [5] Assessing] Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, 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, no amendment under this section shall be made after the expiry of four years [6] from the end of the financial year in which the order sought to be amended was passed.]
(8) Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made by the assessee [or by the deductor] 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.]

6. Considering the settled position of law we note that provisions of section 154 deals with rectification of only those mistakes which are apparent from record and which do not require any substantive arguments and discussions on facts and law. Accordingly, in the present case before us, we are unable to understand as to how the present facts lead to a mistake apparent from record as dealt by section 154 of the Act. We are guided by the judicial precedent in the case of Md. Serajuddin & Bros. v. CIT [2012] 24 taxmann.com 46 (Cal.) by the Hon'ble Jurisdictional High Court of Calcutta wherein it dealt as under–

> ***"18.*** *Undoubtedly this is a debatable issue and such debatable issue cannot be a ground for rectification under Section 154 of the said Act. This has been well settled by plethora of decisions of the Supreme Court and also High Courts we, therefore, quote few decisions of the Supreme Court on this point.*
>
> ***19.*** *In the case of* Hero Cycles (P.) Ltd. *(*supra*) at page 467-468 it is ruled as follows-*
>
> > *"Rectification under Section 154 can only be made when a glaring mistake of fact or law committed by the officer passing the order becomes apparent from the record. Rectification is not possible if the question is debatable. Moreover, the point which was not examined on fact or in law cannot be dealt with as a mistake apparent on the record. This dispute raised a mixed question of fact and law."*
>
> ***20.*** *In the case of* Deva Metal Powders (P.) Ltd. *(*supra*) while examining the scope of Section 22 of U.P. Trade Tax Act, 1948 the language of which is almost pari materia of that of Section 154.The Supreme Court in paragraph 12 of the report held as follows:-*
>
> > *"A bare look at Section 22 of the Act makes it clear that a mistake apparent from the record is rectifiable. In order to attract the application of Section 22, the mistake must exist and the same must be apparent from the record. The power to rectify the mistake, however, does not cover cases where a revision or review of the*

order is intended. "Mistake" means to take or understand wrongly or inaccurately; to make an error in interpreting; it is an error, a fault, a misunderstanding, a misconception. "Apparent" means visible; capable of being seen; obvious; plain. It means "open to view, visible, evident, appears, appearing as real and true, conspicuous, manifest, obvious, seeming". A mistake which can be rectified under Section 22 is one which is patent, which is obvious and whose discovery is not dependent on argument or elaboration."

21. *It is appropriate to quote also paragraph 15 of the said report-*

"15. "Mistake" is an ordinary word but in taxation laws, it has a special significance. It is not an arithmetical error which, after a judicious probe into the record from which it is supposed to emanate is discerned. The word "mistake" is inherently indefinite in scope, as to what may be a mistake for one may not be one for another. It is mostly subjective and the dividing line in border areas is thin and indiscernible. It is something which a duly and judiciously instructed mind can find out from the record. In order to attract the power to rectify under Section 22, it is not sufficient if there is merely a mistake in the order sought to be rectified. The mistake to be rectified must be one apparent from the record. A decision on a debatable point of law or a disputed question of fact is not a mistake apparent from the record. *The plain meaning of the word "apparent" is that it must be something which appears to be so ex facie and it is incapable or argument or debate. It, therefore, follows that a decision on a debatable point of law or fact or failure to apply the law to a set of facts which remains to be investigated cannot be corrected by way of rectifications." [Emphasis supplied]*

22. *It has been appropriately urged by Mr. Khaitan that in view of the aforesaid authoritative pronouncement of the Supreme Court and the observation recorded as above by us, it is not within the purview of Section 154 rather it could have been an action either by way of revision or by appeal not by a authority of having concurrent jurisdiction exercising power under Section 154 of the said Act.*

7. We have heard the rival submissions and perused the material available on record and considered the submissions of both the parties. We note that to justify the claim made by the assessee, the assessee had to adduce supporting documents which in turn requires verification and investigations coupled with long line of arguments. The issue raised by the assessee in his petition for rectification u/s 154 is a debatable one. Considering the facts on record, provisions of the Act and the judicial precedent by the Hon'ble jurisdictional High Court (*supra*), we do not find any reason to interfere with the order of Ld. CIT(A) wherein he has held that it is not a case of rectification of a mistake which is

apparent from record. Accordingly, the appeal of the assessee is dismissed.

9. In the result, the appeal of assessee dismissed.

Order is pronounced in the open court on 10th June, 2022.

Sd/-	**Sd/-**
(SANJAY GARG)	**(GIRISH AGRAWAL)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Kolkata, Dated: 10.06.2022

JD, Sr. P.S.

Copy to:

1. The Appellant: Shri Adi Narayan Gupta, C/o Sri Jagannath Roller Flour Mills, Cuttack, Orissa-751006
2. The Respondent: DCIT, Central circle-4(2) Kolkata.
3. CIT(A)-21, Kolkata
4. The CIT- Kolkata.
5. The DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata