

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.96/Bang/2023
Assessment year : 2017-18

The Deputy Commissioner of Income Tax, Central Circle 2(3), Bengaluru.	Vs.	M/s. Gopalan Enterprises, No.5, Richmond Road, Richmond Town, Bengaluru – 560 025. PAN: AABFG 0682M
APPELLANT		RESPONDENT

Appellant by	:	Shri Chattaraj, Advocate
Respondent by	:	Ms. Neera Malhotra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	10.04.2023
Date of Pronouncement	:	11.04.2023

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal by the revenue is against the order of the CIT(Appeals)-11, DIN-ITBA/APL/M/250/2022-23/1042969416(1) Bengaluru dated 06.05.2022 for the AY 2017-18.

2. The sole and substantive issue involved in this appeal is the rectification order passed by the AO u/s. 154 of the Income-tax Act, 1961 [the Act] dated 19.02.2021 which on appeal was allowed by the

CIT(Appeals) by observing that where two different opinions are possible, the same cannot be subject to rectification.

3. The brief facts are that the AO passed order u/s. 143(3) of the Act on 31.12.2018 assessing taxable income under the normal provisions of the Act at Rs.10,99,29,500 and book profits under the MAT provision was determined at Rs.13,99,54,994. While computing the total income of the assessee, the AO himself allowed deduction u/s. 80IB of Rs.4,50,25,494 on the surrendered amount by the assessee during the course of search & seizure operation & post search enquiry/survey u/s 133A of the Act., for non-production of expenditure details and vouchers. Later on, the AO observed that the assessee's income has been enhanced by Rs.4,50,25,494 and while calculating the MAT, this amount was not added to the book profit. He therefore observed that there is a mistake apparent from the record and passed order u/s. 154 of the Act, enhancing the amount of deduction claimed by the assessee u/s. 80IB of the Act and net tax payable was determined at Rs.37,49,310.

4. The assessee filed appeal before the CIT(Appeals) and contended that the AO has wrongly invoked section 154. The CIT(Appeals) after considering the submissions of the assessee and relying on various judgments allowed the appeal of the assessee. The revenue is in appeal before the Tribunal.

5. The Id. DR submitted that the CIT(Appeals) has wrongly allowed the appeal of the assessee by observing that there are two possible views. She submitted that while computing the assessed income, the AO wrongly calculated the MAT taxable income which has been now corrected by applying section 154 of the Act. There was a mistake in the figures chosen by the AO in the computation of MAT. She strongly argued that there was a mistake apparent on the face of record which could be rectified within the stipulated period.. She relied on the decision of the coordinate Bench of Delhi Tribunal in ITA No.6583/Del/2019 for AY 2013-14, order dated 3.7.2020.

6. On the other hand, the Id. AR submitted that in assessee's own case on the similar issue for AYs 2015-16 & 2016-17 in ITA Nos.575 & 694/Bang/2022 by order dated 22.9.2022 the coordinate Bench of this Tribunal decided the issue in favour of the assessee by observing that the order passed by the AO u/s. 154 was wrong. He also submitted that the AO wanted to tinker on the book profit shown by the assessee which is impermissible as per the Act.

7. After hearing the rival contentions and perusing the entire material on record, we notice that the AO has passed the order u/s. 154 by enhancing the income of the assessee on the ground that there was an error in computation of the MAT during the course of proceedings u/s. 143(3) of the Act on the quantum amount of Rs.4.50 crores claimed by the assessee as deduction u/s. 80IB of the Act on the surrendered income during the course of search/survey. On going

through the order of the CIT(Appeals), we note that there is no basis on the material available on record so that it could be said that there was a mistake apparent from the record and if there are two possible opinions, the same cannot be subject of rectification u/s. 154 of the Act. The case law relied on by the Id. DR is not applicable to the facts of the present case. We note that the coordinate Bench of this Tribunal in assessee's own case for the preceding two assessment years AYs 2015-16 & 2016-17 in ITA Nos.575 & 694/Bang/2022 by order dated 22.9.2022 has decided the issue in favour of the assessee on a similar issue as follows:-

“8. We have heard the rival contentions and perused the material on record. During the course of hearing the learned AR presented arguments on merits stating that the impugned additions made based on the admissions made during the course of survey are not tenable. The learned AR also argued on the legal issue whether the additions to book profits can be done by an order of rectification u/s154. For the purpose of adjudication we will only consider the legal issue of whether the adjustment made by the AO falls within the scope of Section 154 of the Act or not. It is a settled decision position that the scope of rectification is limited to correcting error of facts or error of law on the basis of material available on record.

9. The Hon'ble Supreme Court in the case of Appollo Tyres (supra) has laid down the principle that the AO does not have the jurisdiction to go beyond the net profit shown in the Profit & Loss Account except to the extent provided in Explanation to Section 115JB of the Act. The argument of the learned AR by placing reliance on the decision of the Hon'ble Jaipur Bench of the Tribunal Gie Jewels (supra) that Sections 115JB and 115JC of the Act are pari materia, also needs consideration. It is also to be noted there is an arguments presented by the learned A.R. that the adjusted total income for the purpose of section 115JC is flowing from the financial statement certified by the Chartered Accountant and that AO has no jurisdiction to make corrections to the profit declared as per the Profit & Loss Account. If we are to consider the above decisions and the argument of the learned AR it is clear that the issue of making adjustments to the

book profits u/s.115JC based on the additions/disallowances made to income assessed under normal provisions of the ACT is a debatable issue.

10. We notice that the Hon'ble Karnataka High Court in the case of PCIT vs. Mphasis Software and Services (India) Pvt Ltd [IT Appeal No. 244 of 2021, dated 25-10-2021] which considered in the case of J.J. Glastronics P. Ltd (supra) held that invoking section 154 would be untenable when the matter requires adjudication upon the issue which is debatable issue. In view of these discussions and considering the decisions of the jurisdictional High Court we hold that the AO is not correct in enhancing the book profits u/s.115JC by passing an order under Section 154 of the Act. We therefore see no reason to interfere with the order of the CIT(A) for both the assessment years.”

8. Respectfully following the above judgment, we dismiss the appeal of the revenue.
9. In the result, the appeal by the revenue is dismissed.

Pronounced in the open court on this 11th day of April, 2023.

Sd/-

Sd/-

(N V VASUDEVAN)
VICE PRESIDENT

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 11th April, 2023.

/Desai S Murthy/

Copy to:

1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.