

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

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA.Nos.961 to 963/Hyd/2018		
Assessment Years: 2007-08 to 2009-10		
Celestial Biolabs Limited, Plot No.59, Road No.12, TSIIC Tech Park, IDA Nacharam, Hyderabad – 500076. PAN :AABCC4698Q.	Vs.	Asst. Commissioner of Income Tax, Circle – 1(2), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Shri S. Ramrao.
Revenue by:		Shri Jeevan Lal Lavidiya.
Date of hearing:		11.04.2023
Date of pronouncement:		17.04.2023

ORDER

PER LALIET KUMAR, J.M.

The captioned appeals are filed by the assessee, feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals) – 1, Hyderabad for A.Ys. 2007-08 to 2009-10.

2. The grounds raised by the assessee in ITA No.961/Hyd/2018 for A.Y. 2007-08 read as under :

“1. The order of the learned Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law.

2) The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing officer in passing the order u/s. 154 of the I. T. Act on 19.04.2017

3) *The learned Commissioner of Income-Tax (Appeals) erred in holding that the provisions of Sec.154 are applicable in applying the provisions u/s. 115JB of the I. T. Act.*

4) *The learned Commissioner of Income-Tax (Appeals) ought to have seen that the provisions u/s.10A/10B are applicable to the income derived by the appellant and that, therefore, for the purpose of arriving at the gross receipts the amount allowable u/s.10A/10B has to be excluded for the purpose of determining the book profit u/s. 115JB of the I. T. Act.*

3. Similar grounds were raised by the assessee in other two appeals also i.e., ITA 962 and 963/Hyd/2018 for A.Ys. 2008-09 and 2009-10.

4. Before us, at the outset, both the parties submitted that the issues raised in all the appeals are identical. In view of the aforesaid submissions, we, for the sake of convenience proceed to dispose of all the captioned appeals by a consolidated order but however refer to the facts in ITA No.961/Hyd/2018 for A.Y. 2007-08.

5. The brief facts of the case are that the assessee company is engaged in the business of Research & Development in the field of bio-formulations and bio-informatics technology. The assessee company filed its return of income for the A.Y.2007-08 on 31.10.2007 admitting Nil income after claiming deduction u/s.10A of Rs.4,89,62,681/-. The return of income was processed u/s.143(1) on 11.08.2008 accepting the income returned. Subsequently, the Assessing Officer had notice u/s.148 on 04.06.2009 and completed assessment u/s 143(3) r/w section 147 of the Act determining the total income at Rs.5,71,44,130/- rejecting the claim for exemption u/s 10A of the Act. Subsequently, the assessee filed 154 before the AO enclosing Form No.3CL requesting to consider deductions u/s.35(2AB) &

u/s.35(1)(i), however the same was also rejected by the Assessing Officer and on appeal against the order u/s 154 of the Act passed by the Assessing Officer, the Id.CIT(A) directed the Assessing Officer to allow deduction u/s 35(2AB) of the Act. Thereafter, the Assessing Officer passed consequential order on 27.03.2015, arriving at a loss of Rs. (-) 1,70,50,623/-, allowing deduction u/s.35(2AB) of Rs.7,10,89,500/- and deduction u/s.35(1)(i) of Rs.31,05,255/-. Thereafter, the Assessing officer issued a notice u/s 154 dt.20.02.2017 to the assessee mentioning that MAT provisions were not applied in the consequential order. Thereafter, Assessing Officer passed an order u/s 115JB of the Act, thereby applying the MAT provisions u/s 115JB of the Act and computed the income.

6. Feeling aggrieved with the rectification order passed u/s 154 of the Act, assessee approached the Id.CIT(A) who dismissed the appeal of assessee.

7. Before us, Id.AR for the assessee has submitted that the order passed by the Assessing Officer u/s 154 of the Act was barred by limitation as the original assessment order was passed by the Assessing Officer on 31.12.2010 and the rectification order was passed by the Assessing Officer on 19.04.2013. Further, it was submitted that the error, if any, in applying MAT provisions in the original assessment order dt.31.12.2010 whereby the Assessing Officer instead of applying MAT provisions u/s 115JB of the Act had computed the tax under normal provisions. Hence, the order passed by the Assessing Officer u/s 154 of the Act and the appellate order passed by the Id.CIT(A) confirming the same are without any merit. He had further submitted that section 4 of the Act, which is a taxing provision if read with section 5 which defines the 'total income', then it is clear that the action on the part of the revenue authorities was without any basis.

8. Per contra, the ld. DR had drawn our attention to the order passed by the ld.CIT(A) more particularly to paras 6.1 to 6.4 of the order. It was also the contention of the ld. DR that as per the provisions of section 154 of the Act, if there is a mistake in any orders passed under the I.T. Act, then the same can be rectified within the period of 4 years. It was submitted that the consequential order dt.19.04.2017 was passed by the Assessing Officer pursuant to the direction issued by the ld.CIT(A) on 27.03.2015 and in the said order, the Assessing Officer had failed to raise the tax demand / income of the assessee as per section 115JB of the Act, therefore, rectification order u/s 154 of the Act was passed after giving the opportunity of hearing to the assessee within the period of limitation.

9. We have heard the rival submissions and perused the material on record. As clear from the above noted facts, the Assessing Officer has passed the original assessment order on 31.12.2010 disallowing the deductions claimed under sections 10A, 35(2AB) and 35(I)(i) of the Act. It was held by the Assessing Officer that the assessee was not eligible to claim deduction u/s 10A of the Act and therefore, the assessee on its own withdrew the deduction u/s 10A of the Act and therefore, it claimed in the revised computation of income. Thereafter, the Assessing Officer had computed the total income of the assessee for Rs.5,02,33,083/-. Feeling aggrieved with the same, the assessee filed a rectification application before the Assessing Officer. However, the said rectification application was also dismissed by the Assessing Officer. Against the rectification order, the assessee preferred appeal before the ld.CIT(A). On appeal, the ld.CIT(A) had issued direction at Paras 3.7 to 3.9 of his order (which is placed at page 73 of the paper book). The Assessing Officer after receiving the direction from the ld.CIT(A) had passed the consequential

order on 19.04.2017 thereby computing the loss of (-) Rs.2,46,27,464/- without determining the tax as per section 115 JB of the Act i.e., under the normal provisions of the Act. After passing the consequential order, the Assessing Officer had issued a notice u/s 154 of the Act as the Assessing Officer has not applied the MAT provisions to the assessee company.

10. Now the argument which has been canvassed before us is that, the Assessing Officer can or cannot pass the rectification order u/s 154 of the Act thereby computing the total income of the assessee under the MAT provisions ? In our understanding, for that purposes, it is essential to reproduce section 154(1)(a) of the Act which is to the following effect :

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

*(a) amend **any** order passed by it under the provisions of this Act ;*

(b) amend any intimation or deemed intimation under sub-section (1) of section 143;]]

(c) amend any intimation under sub-section (1) of section 200A.]

(1A) 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.]

11. From the perusal of section 154(1)(a) of the Act, it is abundantly clear that if any mistake or error came to the notice of the Assessing Officer or the Income Tax authorities, then such authorities can rectify the order within a period of 4 years. Admittedly, the Act had used the word “any” in section 154 of the Act. In our view, the consequential order passed by the Assessing Officer on 27.03.2015 is also the order under the Act. Assessing Officer had committed mistake by not determining the

tax liability as per section 115JB of the Act, which is a charging section for the companies. Therefore, the Assessing Officer was within his right to issue rectification order if the Assessing Officer has come to the conclusion that mistake has been crept into consequential order, while determining the tax liability while giving effect to the direction of the Id.CIT(A). Therefore, we are of the opinion that the order passed by the Assessing Officer and confirmed by the Id.CIT(A) was within the four corners of section 154(1)(a) of the Act.

12. The alternative submission made by the assessee before us is that the MAT provisions are not applicable to the proceedings on account of the said fact. It is essential to look into the order giving effect to the order passed on 27.03.2015 whereby after giving effect to the direction of the Id.CIT(A), the total income had reduced to Rs. (-) 1,70,50,623/-. The cursory look of the provisions of section 115JB of the Act makes it abundantly clear that in case, the total income computed in respect of addition in the previous year relevant to the assessment year is less than 10% of its book profit then such book profit shall be deemed into total income of the assessee. Undoubtedly, in the present case, the total income of the assessee came to Rs. (-) 1,70,50,623/- which in any case was less than 10% of the book profits of the assessee. Therefore, the action on the part of the Id.CIT(A) and the Assessing Officer to invoke the provisions u/s 115JB of the Act was in accordance with the law and the authorities below had rightly applied the MAT rate @ 10% of the book profits for determining the tax liability of assessee.

13. Considering the case either from point of limitation or from the point of applicability of MAT provisions, in both the scenarios, the appeal of the assessee has no substance and accordingly, we are of the opinion that the appeal of the assessee

is required to be dismissed. Accordingly, we dismiss the same. Thus, the appeal of the assessee in ITA No.961/Hyd/2018 is dismissed.

14. In the result, the appeal of assessee in ITA No.961/Hyd/2018 is dismissed.

15. As far as the other two appeals are concerned, in view of the submission of both the parties that the issues raised in A.Y. 2007-08 are identical to the other assessment years, we for the reasons stated hereinabove while deciding the appeal in ITA 961/Hyd/2018 and for similar reasons, dismiss the remaining two appeals also.

16. In the result, the appeals of assessee in ITA Nos.962 and 963/Hyd/2018 are dismissed.

17. To sum up, all the appeals of assessee are dismissed. A copy of the same may be placed in respective case files.

Order pronounced in the Open Court on 17th April, 2023.

Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 17th April, 2023.

TYNM/sps

Copy to:

S.No	Addresses
1	Celestial Biolabs Limited, Plot No.59, Road No.12, TSIIC Tech Park, IDA Nacharam, Hyderabad – 500076.
2	Asst. Commissioner of Income Tax, Circle – 1(2), Hyderabad.
3	PCIT- 1, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order