

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F", MUMBAI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
**ITA No. 353/Mum/2018 (A.Y.2007-08)**

**M/s. Vertex Spinning Limited**

1011, 10<sup>th</sup> Floor,  
Embassy Centre,  
207, Nariman Point,  
Mumbai-400 021

**PAN:AABCV5617N**

..... Appellant

Vs.

**DCIT, Circle-5(3)**

573, Aayakar Bhavan,  
M. K. Road  
Mumbai-400 020

..... Respondent

Appellant by : Smt. Dinkle Hariya  
Respondent by : Vranda U Matkari, Sr. AR

Date of hearing : 23/03/2023  
Date of pronouncement : 15/05/2023

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by assessee is directed against the order of  
Ld.Commissioner of Income Tax Appeals-10, Mumbai (for short "Ld.CIT (A)")

dated 27.02.2017 u/s. 250 of the Income Tax Act, 1961 (for short 'the Act') for A.Y. 2007-08. The assessee has raised the following grounds of appeal:

*"1. On the facts and in the circumstances of the case and in law the assessing Officer erred in reopening of the case is bad in law as the assessee has disclosed full or true material fact at the time of assessment. There is neither concealment of on the part of the assessee nor filing of inaccurate particulars of income.*

*2. The Ld.CIT (A) erred in not considering the fact that Assessee is not expert in the Income tax act he had just relied on the certificate issued by the Chartered Accountants."*

Present appeal filed by the assessee is found to be delayed by 255 Days. Present appeal is filed by the assessee against the order of Ld. CIT (A) passed u/s. 250 of the Act vide dated: 27.02.2017 and the same was received by assessee on 27.04.2017. Due date of filing the present appeal in that case would be 26.06.2017, but actual date of filing the same is 12.01.2018, meaning thereby a delay of 255 Days. On the issue of delay, we have gone through the application for condonation of delay and affidavit filed by the assessee.

It is found that the man at the helm of affairs of the company Mr. Suresh Sharma is aged about 68 years and suffering with age related health issues also presently residing at Indore (M.P.). Immediately after receiving order of Ld. CIT (A), copy of order was sent to the Chartered Accountant of assessee, Mr. Chetan Pagaria. But as the CA of the assessee was busy in filing his tax returns and other compliances of clients he has; this issue was overlooked and appeal was not filed well in time. Thereafter, when demand notice was served to the assessee's Mumbai office address, then only he came to know about this delay and immediately contact Mr. Pagaria. Who in turn filed the appeal, ultimately

on 15.01.2018. **We found explanation of the assessee to be reasonable looking at his age and facts enumerated above. Secondly non-condonation of delay will deprive the assessee from a reasonable adjudication of the matter on merits, as the same will not harm the other side. Based on these facts and observation we condone the delay in filing of appeal and matter will be adjudicated on its merits.**

1. Brief facts of the case are that assessee company filed its original return on 27-10-2007 declaring total profit of Rs 1,22,67,480/-. Case of the assessee was selected for scrutiny and a detailed questionnaire was issued u/s. 142(1) of the act. Assessee Company was engaged in the business of manufacturing and trading textile items. Assessment of the assessee was done at 5, 53, 11,000/- vide order dated: 16.12.2009. There were some mistakes apparent from record in this assessment order, hence assessee filed an application u/s. 154 of the Act vide dated: 12.01.2010 and income was recomputed at a figure of Rs. 1, 27, 20,440/- vide order u/s. 154 dated: 03.02.2010.
2. Thereafter a notice u/s. 154 was issued by the office of the then AO vide dated: 17.05.2010, proposing to rectify the mistake on account of short levy of Tax in terms of section 115JB of the Act. In response to this assessee filed its response on 30.09.2010 along with Form No. 29B. Thereafter there was no communication from the assessee either accepting the assessee's response or rejecting the same, but issued another notice u/s. 148 of the act vide dated: 04.12.2012, for the similar issue on which notice u/s. 154 was issued vide dated: 17.05.2010. Ultimately based on this notice u/s. 148 of the Act, assessment was framed u/s. 143(3) r.w.s. 147 of the Act vide order dated: 20.03.2014. Assessee being aggrieved with this re-assessment order preferred an appeal before the Ld. CIT (A), Mumbai, challenging the order of AO on technical grounds and on merits. Ld. CIT (A) also confirmed the order of AO vide his order dated: 27.02.2017 passed u/s. 250 of the Act.

3. Assessee being further aggrieved filed this appeal before us, challenging the order of Ld. CIT (A). We have gone through all the orders mentioned above, i.e., return along with computation filed by the assessee, original order u/s. 143(3), order passed u/s. 154, notice by AO u/s. 154, notice u/s. 148 and re-assessment order passed u/s. 143(3) r.w.s. 147 of the Act vide order dated: 20.03.2014. We observed that assessee fully and truly disclosed its return of income under the normal provisions of the Act as well as under the provisions of MAT u/s. 115JB of the Act. The only mistake committed by assessee was, he shown tax liability as NIL against the income under the provisions of MAT. It is no where proved that there was any concealment of income by the assessee, which can prompt AO to initiate the proceedings u/s. 147 of the Act. Secondly, case was selected for scrutiny and thoroughly scrutinised and assessed.
  
4. In addition to this, AO adjudicated assessee's own application u/s. 154 of the Act, wherein this issue was again examined. Thereafter, AO on his own initiated proceedings u/s. 154 of the Act on the same issue and assessee satisfactorily responded to that vide communication dated: 30.09.2010. Thereafter, after lapse of 4 years AO issued notice u/s. 148 of the Act to discuss the same issue for which he himself initiated proceedings u/s. 154 of the Act.
  
5. Notice u/s. 148 after 4 years can be issued only in a case where there is a wilful attempt to conceal the income by the assessee by filing inaccurate particulars of income. As in this case as discussed in length, there is no wilful concealment or furnishing of inaccurate particulars of income was there at the end of assessee. Even if, assessee shown Rs. NIL as Tax liability against book profit u/s. 115JB of the Act, AO is duly empowered and duty bound to correctly assessee the tax liability under the normal provision and

special provisions of the Act. Nothing was on record that, in fact, the notice under section 154 was withdrawn on the ground that the same was beyond the period of limitation prescribed under section 154(7). In the absence of any specific order of withdrawal of the proceedings under section 154, the proceedings initiated under section 154 can be said to have been pending. In that view of the matter, during the pendency of the proceedings under section 154, it was not permissible on the part of the revenue to initiate the proceedings under section 147/148 of the Act pending the proceedings under section 154.

6. To strengthen our view, we further take guidance from the decision of Hon'ble Calcutta High Court in the case of **[2010] 322 ITR 369 (Calcutta) Berger Paints India Ltd. v. Assistant Commissioner of Income-tax**

*“Mistake apparent from the record which has the effect of enhancing assessment ought to be rectified by resorting to this special and speedy procedure when in the view of the Assessing Officer it is unnecessary to resort to reopening of the assessment. In the field of chargeable income escaping assessment, however, section 147 is very widely worded and would include even escapement due to any mistake in the assessment order. But, when even according to the Assessing Officer himself there is a mistake, apparent from the record as it exists, committed in the order of assessment, which is rectifiable on the basis of the existing record under section 154 being a special provision made for the purpose, and that there is no need to resort to reopening of the assessment as contemplated by section 148 read with section 147 of the Act, then he must resort to the provision and cannot wantonly or arbitrarily and without valid reason resort to reopening of the assessment . . .*

*The function of the Assessing Officer acting under section 147 is not limited, as under section 154, merely to rectifying the result which may have been vitiated due to mistake apparent from the record. It would, therefore, follow that in cases of mistake resulting in escapement, which is the area where both the provisions would become relevant, the Assessing Officer will have to consider whether he was required by the nature of escapement to reconsider the question of how he would*

*ascertain and assess income that has escaped assessment and reopen the assessment or if that is not required then merely to rectify the mistaken result on the basis of the existing record. If he chooses to resort to the former, i.e., section 147 read with section 148 proceedings, he cannot be compelled to resort to section 154 because that would impinge upon his subjective satisfaction under section 147. But if he resorts to section 154 on the ground that the mistake in the order apparent from the record has resulted in escapement which could be rectified by amending the order and enhancing the assessment, then he, on finding that there is no such mistake apparent from the record warranting rectification since the view taken is plausible, cannot in the absence of any other ground on the basis of which he has still reason to believe that the income has escaped assessment, start proceedings again under section 147. If he finds that there is no such mistake since the result was warranted from the record, there would be no occasion to amend the assessment order, where the rectification could not be done on the ground that there were two views possible or that there was discretion lawfully exercised, then the same will also be true even when the Assessing Officer starts the proceedings under section 147 on the same material, because, that power cannot be invoked when there is only a mere change of opinion and in case where in the proceedings under section 154 it is found that what was thought to be a mistake was not a mistake because that view was warranted or permissible from the existing record, then the same finding will bind the Assessing Officer when trying to exercise powers under section 147. In such a case, it would be incumbent on the part of the Assessing Officer who had chosen to resort to section 154 to demonstrate why he is now for the same purpose resorting to section 147. There has to be some compelling reason in such a case for him still to believe that the income that was the subject-matter of rectification has escaped assessment though that was not due to any obvious mistake borne out from the existing record, which could be rectified under section 154. ... It will not be open to the Assessing Officer to arbitrarily or wantonly resort to the provisions of section 147 where the process of rectification under section 154 fails on the merits."*

7. As observed matter was duly covered by section 154 of the Act and AO thrice got the opportunity to proceed under the same. But, instead of that he had chosen for proceedings u/s. 148, which is not either warranted or permissible as per law. It is the settled principle of law that under section 147, the proceedings for the reassessment can be initiated only if the A.O. has "reasons to believe" that the income chargeable to tax has escaped

assessment for any assessment year. The question whether the A.O. had "reasons to believe" is not a question of limitation only, but it is a question of jurisdiction, a vital thing which can always be investigated and looked upon by the appellate courts. Here in this case, from a bare perusal of the "reasons recorded" it is evident that the same is based on the reasoning's given in the notice u/s. 154 issued earlier by the A.O. and no new material have been brought on record showing any live nexus with the income chargeable to tax which can be said to have escaped assessment. The answer to relevant queries were already on record against proceedings u/s. 154 of the Act initiated by AO, besides that there is no other grounds or reasons in the "reasons recorded". In view of the above observations and facts of the case, we set aside the order of Ld. CIT (A) and direct the AO to accept the final figures of Tax as worked out by virtue of his own order u/s. 154 of the Act vide dated: 03.02.2010. **In the result ground no. 1 and 2 raised by the assessee is allowed.**

**8. In the result appeal of the assessee is allowed.**

Order pronounced in the open court on 15<sup>th</sup> day of May, 2023.

Sd/-

(AMIT SHUKLA)  
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 15/05/2023

*Mahesh R. Sonavane*

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

//True Copy//

BY ORDER,

(Dy. /Asstt. Registrar)  
**ITAT, Mumbai**