

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F", MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
**ITA No. 63/Mum/2023 (A.Y. 2018-19)**

**UMA Polymers Limited**

215, Raheja Plaza, Off Veera Desai  
Road Andheri (W)  
Mumbai- 400053

**PAN: AAACU0748E**

..... Appellant

Vs.

**The Deputy Commissioner of Income Tax**

**Central Processing Centre**

Bangalore,  
Karnataka-560 500

..... Respondent

Appellant by	:	None
Respondent by	:	Ms. Vranda U Matkari, Sr. AR
Date of hearing	:	01/03/2023
Date of pronouncement	:	15/05/2023

**ORDER**

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

This appeal by assessee is directed against the order of Commissioner of Income Tax, Appeals (for short 'CIT (A)') dated 21.11.2022 u/s. 250 of the Income Tax Act, 1961 (for short 'the Act') for A.Y. 2018-19. The assessee has raised the following grounds of appeal:

1. *The orders passed by the learned lower authorities are bad in law and on facts.*

2. *That the Ld. CIT erred in confirming addition made by the CPC, Bengaluru for Rs. 14,34,718/- while passing intimation u/s. 143(1) for A.Y. 2018-19 treating it as a prima facie adjustment which in fact is not a prima facie adjustment and deserves to be deleted.*

3. *That the appellant craves leave to add/alter, amend and or delete any of the ground/grounds on or before the appeal is finally heard.*

4. *That the appellant prays for justice.*

1. Brief facts of the case are that assessee filed its return of income on 27-09-2018. Return of the assessee was processed u/s. 143(1) and intimation was issued vide dated: 25-12-2019. In this intimation CPC, Bengaluru made adjustment u/s. 143(1) (a) (iv) of the Act w.r.t. employee's contribution u/s. 36(1) (va) r.w.s. 2(24) (x) of the Act.
2. Before this adjustment was being made an opportunity was provided to the assessee vide communication Dated: 10-05-2019, against which assessee duly responded through its communication of even date vide page no. 1 of the paper book. As per assessee the response was made but, the CPC made a remark as under:

*"As there has been no response/**the response given is not acceptable** the adjustment(s) as mentioned below are being made to the total income as per the provisions of section 143(1)(a) of the Act."*

3. Being aggrieved, assessee preferred an appeal before the Ld. CIT(A) Against this intimation, but Ld. CIT (A) also confirmed the version of CPC,

Bengaluru vide his order u/s. 250, Dated: 21-11-2022. Being further aggrieved assessee approached us through this appeal.

4. We have gone through the intimation issued by CPC, Bengaluru u/s. 143(1), Order of Ld. CIT (A) and submissions of the assessee along with copies of judicial pronouncements relied upon by the assessee. We observed, the main grievance of the assessee is not on merits, its main grievance is w.r.t. the procedure adopted by the CPC, Bengaluru by not acknowledging its response against the communication dated: 10-05-2019.
  
5. Through this order we will discuss the merit as well as technical issue raised by the assessee about the procedure being adopted by CPC, Bengaluru. In this regard we heavily relied upon the decision of Hon'ble Supreme Court in the case of Saurashtra Kutch

*"[2008] 305 ITR 227 (SC) ACIT v. Saurashtra Kutch Stock Exchange Ltd.*

*The core issue, therefore, is whether non-consideration of a decision of Jurisdictional Court or of the Supreme Court can be said to be a 'mistake apparent from the record'? Both, the Tribunal and the High Court were right in holding that such a mistake can be said to be a 'mistake apparent from the record' which can be rectified under section 254(2). [Para 40]*

*It is also well - settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the Court to pronounce a 'new rule' but to maintain and expound the 'old one'. In other words, the Judges do not make law; they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make a new law. It only discovers the correct principle of law which must be applied retrospectively. **To put it differently, even where an earlier decision of the Court operated for quite some time, the decision rendered later would have retrospective effect, clarifying the legal position which was earlier not correctly understood.** [Para 42]*

*In the instant case, according to the assessee, the Tribunal had decided the matter on 27-10-2000. Hiralal Bhagwati's case (supra) was decided few months prior to that decision, but it was not brought to the attention of the Tribunal. In the circumstances, the Tribunal had not*

*committed any error of law or of jurisdiction in exercising power under sub-section (2) of section 254 and in rectifying 'mistake apparent from the record'. Since no error was committed by the Tribunal in rectifying the mistake, the High Court was not wrong in confirming the said order. Both the orders, therefore, were strictly in consonance with law and no interference was called for. [Para 47]"*

6. In view of the above decision of Hon'ble Apex Court, the statement of law contained in the order of the Hon'ble Supreme Court is a declaration of law. Thus, the issue is not debatable at all and only one view is possible. It only discovers the correct principle of law which must be applied retrospectively. So as far as merits is concerned assessee's appeal is not sustainable in view of the decision of Hon'ble Supreme Court in the case of [2022] 143 taxmann.com 178(SC) Checkmate Services (P.) Ltd. v. CIT. As far as technical point is concerned CPC, Bengaluru clearly mentioned "*As there has been no response/the response given is not acceptable*". In the given circumstances, where a law of land has been declared by Hon'ble Apex Court and that is applicable retrospectively as discussed (Supra), we are of the opinion that assessee's case falls in "*the response given is not acceptable*".

7. In view of above we don't find any force in the contentions of the assessee and there is no point to interfere in the order of Ld. CIT (A). We hereby confirm the findings in the order of Ld. CIT (A) and action of CPC, Bengaluru.

8. **In the result appeal filed by the assessee is dismissed.**

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

Sd/-

(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT 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 CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

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