

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

आयकर अपील सं./ITA No.28/SRT/2023

निर्धारण वर्ष/Assessment Year: (2016-17)

(Virtual Hearing)

Enviro Technology Limited, Plot No. 2413/14, GIDC Estate, Ankleshwar – 393002, Gujarat.	Vs.	The DCIT, Centralized Processing Centre, Banglore.
(Appellant)		(Respondent)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACE4126G		

Appellant by	Ms Urvashi Shodhan, AR
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	24/04/2023
Date of Pronouncement	16/06/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2016-17, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the Id. CIT(A)”], National Faceless Appeal Centre (In short ‘NFAC’), Delhi, which in turn arises out of an assessment order passed by Assessing Officer, Centralized Processing Centre (‘CPC’), Bangalore, under section 154 of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act’), dated 30.12.2018.

2. The grounds of appeal raised by the assessee are as follows:

“1. On the facts and circumstances of the case and in law, the Commissioner of income-tax (Appeals) [‘CIT(A)’] erred in dismissing ground of appeal no.1 in respect of short-granting of set-off of MAT credit under section 115JAA of the Act by holding that the same does not arise from the order passed under section 154 of the Act.

2. On the facts and circumstances of the case and in law, the appellant prays that the set-off of MAT credit under section 115JA ought to be granted on the

difference between the tax payable as per normal provisions of the Act and book profit as per section 115JB inclusive of surcharge and education cess.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing of the appeal, so as to enable the Hon'ble Income-tax Appellate Tribunal ('ITAT') to decide this appeal according to law."

3. At the outset, Ld. Counsel fairly agreed that application filed by assessee under section 154 of the Act before the Assessing Officer, is not available with the assessee. The Ld. Counsel for the assessee submitted that Assessing Officer has not rectified the apparent mistake under section 154(1) of the Act and did not include the surcharge and education cess in MAT credit. The Ld. Counsel also relied on the judgment of Co-ordinate Bench of Hyderabad and Kolkata Tribunal in case of Virtusa India (P.) Ltd., 67 taxmann.com 65 (Hyd. Trib.) and contended that tax liability for MAT are calculated with surcharge and education cess which is part of tax. The Ld. Counsel stated that this mistake can be rectified under section 154 of the Act, by the Assessing Officer, however, Assessing Officer has failed to do so and Ld. CIT(A) has also confirmed the action of the Assessing Officer.

4. On the other hand, Learned Departmental Representative (Ld. DR) for the Revenue submitted that the issue raised by the assessee is a debatable issue, as the assessee has relied on several case law, therefore it cannot be rectified under section 154 of the Act. Since it is a debatable issue, therefore Ld. DR contended that the order passed by the Ld. CIT(A) should be upheld.

5. We have heard both the parties. We note that Ld. CIT(A) has passed a detailed and speaking order, which is reproduced below:

"4. Ground No.1 is pertains to the issue whether MAT credit is excluding surcharge and education cess or not. The appellant has relied on the Hyderabad Tribunal and Kolkata Tribunal in the cases of Virtusa India (P) Ltd. and Bhagwati Oxygen Ltd. respectively.

4.1 However, this issue is not arising out of order u/s 154 but arising from order u/s 143(1). The reason for rectification, as given in the order u/s 154, are as under:

“In case of the assessee for the above assessment year, a notice had already been issued proposing to withdraw tax credit given to the assessee earlier at the time of processing the return u/s. 143(1) of the Income-tax Act.

The assessee was given an opportunity to register his/her objection within 15 days of receipt of the notice. However, there is no response from the assessee.

As stated in the above notice, in those cases where tax credits are withdraw by the deductor, the tax credits which were allowed in the previous intimation u/s 143(1)/order u/s 154 are no longer available to the assessee due to the fact that the tax deductor of the assessee has subsequently withdraw the same partially/fully.

Consequently, the intimation u/s 143(1) sent to the assessee is rectified hereby u/s. 154 by reducing the tax payment credits to the extent they are withdraw by the assessee’s tax deductor. Similarly, in those cases where the assessee has not filled the tax payments schedules in the Return Properly, the previous intimation u/s. 143(1)/order u/s 154 is rectified by giving credit to the taxes paid only to the extent claimed in the return.”

4.2 *The appellant has not filed any appeal against order u/s. 143(1). Since, this issue is a debatable issue therefore could not have been decided in application u/s. 154 of the Income Tax Act, 1961. Unless there is mistake apparent in processing u/s. 143(1) of the Act. Whether it could have been reduced in processing u/s. 143(1) is not arising out of this appeal as the present as the present appeal is against order u/s. 154 dated 30.12.2018.”*

6. We have gone through the above findings of Ld. CIT(A) and noted that the assessee’s ground pertains to the issue whether MAT Credit is excluding surcharge and education cess or not. The Ld. CIT(A) rightly pointed out that assessee has not filed any appeal against order under section 143(1) of the Act and since the issue is a debatable issue therefore it cannot be rectified under section 154 of the Act, unless there is a mistake apparent from record. We have gone through the above findings of Ld. CIT(A), and noted that there is no infirmity in the order passed by Ld. CIT(A), therefore, we dismiss the appeal of the assessee.

7. In the result, appeal filed by the assessee is dismissed.

Order pronounced on 16/06/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 16/06/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat