

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री मंजुनाथ. जी, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER AND
SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./ITA No.986/Chny/2022
निर्धारण वर्ष /Assessment Year: 2013-14

Ramasamy Senthilkumar,
76/466, Rajaji Street,
Suramangalam,
Salem-636 005.
[PAN: AQPPK-1526-L]

The Income Tax Officer,
Ward-1(3),
Vs. Salem

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri S. Sridhar, Advocate(Erode)
: Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 18.05.2023

घोषणा की तारीख /Date of Pronouncement

: 16.06.2023

आदेश / ORDER

PER MANOMOHAN DAS, J.M:

Aforesaid appeal by Assessee for Assessment Year (AY) 2013-14 arises out of the order of learned Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi [hereinafter "CIT(A)"], dated 07-10-2022 in the matter of rectification order by Ld. Assessing Officer [AO] dated 10-02-2020 passed under section 154 of the Income Tax Act, 1961 (hereinafter "the Act"). The grounds urged in the appeal are as under:

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- 1) *The order of the learned CIT(A) is bad and erroneous in law.*
- 2) *The learned CIT(A) erred in not considering the written submission in proper perspective, as the levy of tax at the normal rates while completing assessment by order u/s 143(3) r.w.s. 147 was rectified u/s 154 of the Act by order dated 10-12-2020.*
- 3) *The learned CIT (A) failed to consider the fact that the order levying tax u/s 115BBF, under the garb of sec.154 of the IT Act is bad and wrong, for the very levy is not amenable to rectification u/s 154, since it is a debatable issue. [Relying on ITA No. 371/Jodh/2018 dated 10-05-2019]*
- 4) *The learned CIT(A) failed to consider the settled principle that "a mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions" [Relying on 82 ITR 50 (SC).*

And for other reasons that may be adduced at the time of hearing, the appellant prays that this appeal be admitted, considered and justice be rendered.

2. The brief facts of the case are that the assessee is an individual and is engaged in the business of transport. He did not file return of income for the Assessment Year 2013-14 as per section 139 of the Act. Consequently, the Ld. AO issued notice under section 148 of the Act on 28-03-2018. The assessee in response to the said notice filed return of income on 28-04-2018 declaring his total income at Rs.1,80,990/-. The Ld. AO completed the assessment under section 143(3)/147 of the Act on 17-10-2018 by making an addition of Rs.2,46,896/- to the total income of the assessee under section 68 of the Act on account of unexplained credits. While adding the amount,

the Ld. AO treated the addition under the business income instead of “other sources” and the rate of tax was computed in normal rates instead of the tax to be computed with special rate as per section 115BBE of the Act. In order to rectify that mistake, the Ld. AO issued notice under section 154 to the assessee but it was not responded by the assessee. The Ld. AO thereafter, assessed the aforesaid addition at special rate as per section 115BBE of the Act and revised Tax computation and demand notice under section 154 of the Act.

3. Being aggrieved, the assessee preferred 1st appeal before the Ld. CIT(A) unsuccessfully. Aggrieved further, the assessee filed the present appeal before the Tribunal.

4. Heard both the parties and perused the material on record. The assessee submitted before the Ld. CIT(A) that, he did not file objections before the Ld. AO as he was not aware of the provisions of law. His further submissions were that, mistake apparent on the record must be an obvious and patent mistake which requires no long drawn process of reasoning, the issue involved in the matter is a debatable issue etc. It is submitted before us that the AO cannot amend the rate of tax by invoking section 115BBE of the Act as it is a debatable issue. He also relies on the decision of the Hon’ble Supreme court of India in

82 ITR 50 (SC) and the decisions of other Tribunals [205 TTJ (Jd) 810; 186 ITD 434/123 taxmann.com.

On the other hand, the Ld. DR supported the decision of the Ld. CIT(A).

5. We have considered the submissions of both the parties and are of the view that, the appeal of the assessee has to be rejected. The assessee is aggrieved due to the application of special rate of tax on the added amount of Rs. 2,46,896/-. We notice that, the Ld. AO added the said amount under section 68 of the Act by treating the same as “unexplained credit”. The rate of tax which was to be imposed by the Ld. AO is as per section 115BBE of the Act. Because, addition has been made under section 68 of the Act. The rate of tax at the relevant time as per section 115BBE of the Act was “thirty per cent” which has been rightly discussed by the Ld. CIT(A) in his order dated 07-10-2022. The Ld. AO had calculated the rate of tax at the normal rate by treating the cash credit income under the head of “business income” instead of the head of income “other source” at the time of completion of the assessment by mistake. This mistake on the part of the Ld. AO has been rectified by him under section 154 of the Act proceeding of the Act. This issue of rectification of mistake by the Ld. AO cannot be treated as debatable issue. The Ld. AO has calculated the tax as per

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provision of section 115BBE of the Act with the help of section 154 of the Act and cured the mistake committed by him at the time of completion of the assessment. Further, the mistake which was committed by the Ld. AO was a mistake apparent on the record. Therefore, we have to decide the appeal against the assessee appellant and confirm the order dated 07-10-2022 passed by the Ld. CIT(A).

6. In the result, the appeal of the assessee is dismissed.

Order pronounced on 16th June, 2023.

Sd/-
(मंजुनाथ. जी)
(Manjunatha. G)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 16.06.2023.

EDN/-

Sd/-
(मनोमोहन दास)
(Manomohan Das)
न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF