

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Ms. Astha Chandra, Judicial Member

ITA No. 1453/Del/2022 : Asstt. Year: 2017-18

Sonia Mehta, C/o Lall & Company, CAs, 31, Sirifort Road, New Delhi-110049	Vs.	DCIT, Central Circle-30, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. ACAPM1777A		

Assessee by : Sh. Rajesh Malhotra, CA

Revenue by : Sh. H. K. Choudhary, CIT DR

Date of Hearing: 03.04.2023

Date of Pronouncement: 30.06.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-30, New Delhi dated 25.04.2022.

2. The assessee has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case and in law, the authorities below have erred in assuming the jurisdiction u/s 154 by enhancing the demand without following the proper procedure. Therefore, the whole action of the authorities below is wrong, illegal, misconceived, unjustified and bad at law therefore it should be quashed.

2. On the facts and in the circumstances of the case and in law, the authorities below have erred in evoking section 115BBE to re-calculate tax whereas there was no mention of evoking this section in original assessment order. Therefore, this being a change of opinion of Ld. AO which is not permissible u/s 154 of

the Act. Therefore, the whole action of the authorities below is bad at law, wrong, illegal, misconceived, unjustified and therefore it should be quashed.

3. On the facts and in the circumstances of the case and in law, the authorities below have erred in enhancing interest u/s 234B of the Act. The action of the authorities below is wrong, illegal, misconceived, unjustified and bad at law therefore it should be quashed."

3. The impugned order passed by the DCIT, Central Circle-30 is as under:

"Order u/s 153A of the Income Tax Act, 1961 has been completed on 16.12.2018 at the income of Rs.21,24,700/- against return income of Rs.6,99,460/- after addition of Rs.14,25,241/- on account of unexplained money found and seized during the search.

On perusal of assessment records, it is revealed that during the assessment proceedings, tax and surcharge on income added of Rs.14,25,241/- have not been charged according to Section 115BBE of the Act inadvertently.

Tax and surcharge of the above added income should be charged according to the provision of 115BBE (i.e. Tax = 60%, surcharge = 25%). As this is mistake apparent from records, hence rectification order u/s 154 of the Act is passed.

Issue necessary Forms. Credit prepaid tax and charge interests as per the provisions of the Income Tax Act."

4. The provisions of Section 154 reads as under:

"Rectification of mistake.

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;

(d) amend any intimation under sub-section (1) of section 206CB.

(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.

(2) Subject to the other provisions of this section, the authority concerned—

(a) may make an amendment under sub-section (1) of its own motion, and

(b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee or by the deductor or by the collector, and where the authority concerned is 71[the Joint Commissioner (Appeals) or] the Commissioner (Appeals), by the Assessing Officer also.

(3) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee or the deductor or the collector, shall not be made under this section unless the authority concerned has given notice to the assessee or the deductor or the collector of its intention so to do and has allowed the assessee or the deductor or the collector a reasonable opportunity of being heard.

(4) Where an amendment is made under this section, an order shall be passed in writing by the income-tax authority concerned.

(5) Where any such amendment has the effect of reducing the assessment or otherwise reducing the liability of the assessee or the deductor or the collector, the Assessing Officer shall make any refund which may be due to such assessee or the deductor or the collector.....

5. It is a fact on record that the provisions of sub-section (3) of Section 154 has not been followed by the Assessing Officer [refer para 9.5 page 9 of the Id. CIT(A)] and hence the order passed u/s 154 of the Assessing Officer is statutorily not justifiable.

6. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 30/06/2023.

Sd/-

(Astha Chandra)
Judicial Member

Dated: 30/06/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR