

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष

BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM &
HON'BLE SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 254/JP/2023
निर्धारण वर्ष/Assessment Year : 2017-18.

Bhuralamal Rajmal Surana & Sons Pvt. Ltd., M-26, Greater Kailash-II, Market, New Delhi.	बनाम Vs.	The ACIT Central Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AACCB 0074 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.R. Sharma, CA

राजस्व की ओर से / Revenue by : Mrs. Manisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 07/06/2023
उदघोषणा की तारीख / Date of Pronouncement: /06/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 28.02.2022 of Id. CIT (A)-4, Jaipur passed under section 154 of the IT Act for the assessment year 2017-18. The assessee has raised the following grounds :-

1. That on the facts and in the circumstances of the case, the Id. CIT (A)-4, Jaipur is wrong, unjust and has erred in law in passing the impugned order u/s 154/corrigendum in as much as :
 - (a) No proceedings were pending before her;
 - (b) No proceedings were directed to be initiated in original appeal order dt. 28.02.2022 and/or;
 - (c) It has been passed in haste without affording reasonable opportunity to the appellant.

2. That without prejudice to the ground no. (1) on the facts and in the circumstances of the case the CIT (A)-4, Jaipur is wrong, unjust and has erred in law in directing initiation of penalty proceedings u/s 270A of the IT Act, 1961 against the appellant for alleged mis-reporting of income.
3. That the appellant craves permission to add to or amend to any of the above grounds of appeal or to withdraw any of them.

2. The brief facts of the case are that the assessee company is engaged in business of manufacturing and sale of ornaments and jewellery. It filed return of income for the year under appeal on 11.08.2017 declaring an income of Rs. 2,23,690/-. The case of the assessee was selected for scrutiny and accordingly notice under section 143(2) was issued on 21.09.2018 and served on the assessee. The assessee was also issued notice under section 142(1) of the I.T. Act, 1961 along with questionnaire asking for the information. In compliance to the said notices, the assessee submitted details/information through e-proceedings. The information/details furnished by the assessee were examined by the AO but could not find it acceptable. Finally, the AO completed the assessment under section 143(3) of the IT Act, 1961 at a total income of Rs. 1,06,49,890/- after making addition of Rs. 32,91,000/- on account of cash deposited during demonetization period treating it as undisclosed income of the assessee under section 68 and subjected the same to tax @ 60% under section 115BBE of the IT Act. The AO further made addition of Rs. 71,35,200/- under section 41(1) of the I.T. Act, 1961 holding that appellant failed to show genuineness of the amount shown as outstanding balance in respect of Rs. 55,95,750/- in the name of M/s. Raj Enterprises and of Rs. 15,39,450/- in the name of M/s. Nirat Gems and, therefore, considered the above outstanding balance as not payable by appellant and recorded

as false liability in books of accounts and added the same back to total income of the appellant, vide his order dated 14.12.2019. Aggrieved by the order of the AO, the assessee preferred appeal before the Id. CIT (A)-4, Jaipur, who after considering the detailed submissions/evidences furnished by the assessee passed order dated 28.02.2022 thereby partly allowed the appeal of the assessee.

2.1 Subsequently, the AO issued notice to the assessee under section 271AAC(1) of the IT Act, 1961 on 22.02.2023 to levy penalty under section 271AAC. The assessee in response to the said notice filed written submission on 25.02.2023 stating that penalty under section 271AAC is not leviable as after appeal effect order of Id. CIT (A), no addition/income remain sustained which is chargeable under section 115BBE of the IT Act. The Id. CIT (A) vide para 7.2(i) of her order held that **" Thus making the addition of unaccounted sales u/s 68 is totally unjustified, consequently same not be covered u/s 115BBE. Therefore, observation of AO regarding various items being covered u/s 115BBE requires to be altered. Accordingly, the ground of appeal no. 4 is treated as allowed."**

Thereafter, the AO vide his letter dated 15.03.2023 requested the Id. CIT (Appeals)-4, Jaipur to pass a corrigendum/rectification order for initiating penalty proceedings under section 270A of the IT Act, 1961 on the trading addition of Rs. 4,18,406/- sustained by the Id. CIT (A) in the appeal order by applying GP rate. Consequently, the Id. CIT (A) issued notice under section 154 of the Act on 21.03.2023 fixing the date of hearing on 24.03.2023 to initiate penalty proceedings under section 270A of the Act. Assessee sought time to reply, but denying the reasonable opportunity of being heard, the Id. CIT (A) passed order ex-parte under section 154 of the IT Act

directing the AO for initiation of penalty proceedings under section 270 of the IT Act, 1961. Now, aggrieved by the order of Id. CIT (A) dated 27.03.2023, the assessee has preferred this appeal before the Tribunal.

3. Before us, the Id. A/R submitted his written submissions as under :-

“ Ground Nos. 1 & 2: Both grounds relate to same issue hence clubbed and are dealt together. Ld. CIT(A)-4, Jaipur is wrong, unjust and has erred in law in passing the impugned order u/s 154/ corrigendum in as much as no proceedings were pending before her.

In this connection it is submitted that the Ld. Commissioner of Income Tax (Appeals) has no power to issue directions or pass orders in a case where no proceedings are pending before them. The CIT(A) is a quasi-judicial authority and exercises appellate jurisdiction over the orders passed by the Assessing Officer (AO). Their role is to hear appeals filed against the orders of the AO and determine whether the assessment order is correct or not. If there are no pending proceedings or appeals before the CIT(A), they do not have the jurisdiction or authority to issue any directions or pass orders in the case, The CIT(A) can only exercise the quasi-judicial powers when there is an appeal filed by the taxpayer against the assessment order is pending before him. If no proceedings are pending before the CIT(A) in a particular case, it would be beyond the jurisdiction of the CIT(A) to issue directions or pass orders in any case.

The powers of CIT(A) are provided in section 251 of the IT Act, 1961. For ready reference and sake of convenience the said provisions are reproduced herein below:-

(1) In disposing of an appeal, the [Commissioner (Appeals)] shall have the following powers

<i>(a)</i>	<i>in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment</i>
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(aa)	<i>in an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment:]</i>
(b)	<i>in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty:</i>
(c)	<i>in any other case, he may pass such orders in the appeal as he thinks fit.</i>

(2) The Commissioner (Appeals)] shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation. - In disposing of an appeal, the [Commissioner (Appeals)] may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the [Commissioner (Appeals)] by the appellant.

It is verifiable from the above provisions of income Tax law the CIT (A) has no power to issue direction in case where no proceedings are pending before him. The said action of Ld. CIT(A) for initiation of penalty proceedings u/s 270A of the Act is not a rectification of order but a revision of appeal order earlier passed by her predecessor CIT(A) which is not allowed under the provisions of IT Act, 1961. Accordingly, the direction given by Ld. CIT(A) for initiation of penalty proceedings u/s 270A of the IT Act, 1961 and order passed u/s 154 is grossly wrong, invalid, bad in law and without jurisdiction.

It is further submitted that there is no mistake apparent from the appeal order passed by the than Ld. CIT(A) and accordingly the rectification order passed by present CIT(A) is without jurisdiction and out of the preview of provisions of section 154 of the IT Act, 1961. For ready reference the provisions of section 154 of the IT Act, 1961 are reproduced herein below:-

"(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 2004:

(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 [the Joint Commissioner (Appeals) or the Commissioner (Appeals), by the Assessing Officer also"

It is therefore requested that order passed by Ld. CIT(A) u/s 154/250 of the IT Act, 1961 may kindly be cancelled including the direction issued by her for initiating the proceedings u/s 270A of the IT Act, 1961.”

4. On the other hand, the Id. D/R supported the impugned order under section 154.

5. We have heard rival submissions, perused the material on record and gone through the orders of the revenue authorities. From the facts, we noticed that the assessee company is engaged in the business of manufacturing and sale of ornaments and jewellery. The return of income for the year under consideration was filed on 11.08.2017 declaring an income of Rs. 2,23,690/-. Subsequently, the case of the assessee was taken up for scrutiny and finally the assessment was completed under section 143(3) of the I.T. Act, 1961 at a total income of Rs. 1,06,49,890/- after making addition of Rs. 32,91,000/- under section 68 of the Act and Rs. 71,35,200/- under section 41(1) of the Act. The AO in the assessment order also initiated penalty proceedings under section 271AAC of the Act on account of addition of Rs. 32,91,000/- and penalty under section 270A on the addition of Rs. 71,35,200/-.

5.1 Against the order of assessment with regard to addition, assessee preferred appeal and Id. CIT (A) in her order dated 28.02.2022 concluded that only profit element on sale of Rs. 32,91,000/- by applying average GP rate should be added and thus deleted the remaining addition by allowing the

appeal of the assessee. It was specifically held that neither provisions of section 68 of the Act are applicable on the addition nor it is chargeable @ 60% under section 115BBE of the Act. In this way, the only addition remained by Id. CIT (A) in her order is Rs. 4,18,406/- only by applying the GP rate of 26.63% on the declared turnover as against the GP rate of 25.38% declared by the assessee.

5.2 On 22.02.2023, the AO issued notice under section 271AAC(1) of the Act, which was replied by the assessee on 25.02.2023 wherein specific plea was raised by stating that penalty under section 271AAC is leviable only if addition is sustained under section 68 of the Act and income is chargeable under section 115BBE of the Act. Since as per the facts of the present case, after appeal effect of the order of the Id. CIT (A), no addition remained sustained, which is chargeable under section 115BBE of the Act, therefore, no penalty under section 271AAC is leviable.

5.3 After the said reply from the assessee, the AO vide his letter dated 15.03.2023 requested the Id. CIT (A) to pass a corrigendum/rectification order for initiating penalty proceedings under section 270A of the Act on the trading addition of Rs. 4,18,406/- sustained by Id. CIT (A) in the appeal order by applying GP rate of 26.63%.

5.4 On considering the entire factual and legal position, we find that the Id. CIT (A) has no power to issue the directions or pass order in a case where "no proceedings are pending" before him. As the Id. CIT (A) is a quasi judicial

authority and exercises appellate jurisdiction over the orders passed by the AO. Therefore, the role of the Id. CIT (A) is to hear appeals filed against the order of the AO and determine whether the assessment order is correct or not. If there are no pending proceedings or appeals before the Id. CIT (A) then in that eventuality, then he would not have jurisdiction or authority to issue any directions or pass orders in the case. The Id. CIT (A) can only exercise the quasi judicial powers when there is an appeal filed by the tax payer against the assessment order is pending before him and in case no proceedings are pending before Id. CIT (A) in a particular case, then in that eventuality it would be beyond jurisdiction of the Id. CIT (A) to issue any directions or pass any orders in any case. The powers of Id. CIT (A) are specifically provided under the provisions of section 251 of the IT Act, 1961. For ready reference and sake of convenience the particular provisions are reproduced herein below :-

"Sec. 251 (1) In disposing of an appeal, the [Commissioner (Appeals)] shall have the following powers

<i>(a)</i>	<i>in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment</i>
<i>(aa)</i>	<i>in an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the</i>

	<i>Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment:]</i>
<i>(b)</i>	<i>in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty:</i>
<i>(c)</i>	<i>in any other case, he may pass such orders in the appeal as he thinks fit.</i>

(2) The Commissioner (Appeals)] shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation. - In disposing of an appeal, the [Commissioner (Appeals)] may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the [Commissioner (Appeals)] by the appellant."

From the above provisions, it is clear that the Id. CIT (A) has no power to issue direction in case where "no proceedings are pending" before him and thus in this way pendency of proceedings of proceedings is a *sine quo non* for passing any order by Id. CIT (A). Therefore, in view of the above legal provision, the action of the Id. CIT (A) for initiation of penalty proceedings under section 270A of the Act is not a rectification of order but a revision of appeal order earlier passed by his predecessor CIT (A) which is not permissible under the provisions of the IT Act. Therefore, the directions given

by Id. CIT (A) for initiation of penalty proceedings under section 270A of the Act and in this regard order passed under section 154 of the Act is palpably wrong, invalid and bad in law and without jurisdiction. There is a difference between rectification of an order and revision of an order. The rectification of any mistake can only be passed in order to put something right. However, revision means, the changing of something in order to correct or improve it. Thus, in our view, any change in the order can only be done by invoking the powers of revision and not by passing order of rectification under section 154 of the Act. In this regard we draw strength from the decision of Hon'ble Supreme Court in the case of CIT vs. Ralson Industries Ltd. (2007) 158 Taxman 160 (SC) wherein it has categorically been held that the scope and ambit of a proceeding for rectification of an order under section 154 and a proceeding for revision under section 263 are distinct and different. Order of rectification can be passed on certain contingencies. However, it does not confer a power of review. Reference is made to the judgment of Hon'ble Gujarat High Court in the case of Gujarat State Seeds Corporation Ltd. vs. ITO, (2016) 66 taxmann.com 104 (Gujarat). Since in the present case no proceedings are pending before the Id. CIT (A), therefore, the Id. CIT (A) was not right in passing order of rectification by directing to initiate the penalty proceedings under section 270A of the IT Act in place of penalty proceedings under section 271AAC of the Act when admittedly vide her initial order dated 28.02.2022 has categorically held that addition made on account of alleged

unaccounted sale under section 68 is totally unjustified and consequently not covered under section 115BBE of the Act and there was no income chargeable to tax under section 115BBE of the Act. Therefore, after culmination of proceedings, the Id. CIT (A) was not within jurisdiction to order initiation of penalty proceedings under section 270A of the IT Act by passing rectification order under section 154 of the Act as the said action of Id. CIT (A) is without jurisdiction and out of purview of the provisions of section 154 of the Act. Therefore, the same deserves to be quashed and set aside. Consequently, the appeal filed by the assessee stands allowed.

6. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 17/07/2023.

Sd/-

(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 17/07/2023.

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Bhuramal Rajmal Surana & Sons Pvt. Ltd., New Delhi.
2. प्रत्यर्थी / The Respondent- The ACIT, Central Circle-2, Jaipur.
3. आयकर आयुक्त / CIT

4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 254/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar