आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा॰ एस. सीतालक्ष्मी,न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 78/JPR/2023
निर्धारण वर्ष/Assessment Year : 2015-16

| | | |
|---|---|---|
| Dhabriya Polywood Limited<br>B- 9 D 1, Malviya Industrial Area,<br>Jaipur. | बनाम<br>Vs. | DCIT,<br>Central Circle-1,<br>Jaipur. |
| स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AACCD 5090 Q | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

निर्धारिती की ओरसे/Assesseeby : Shri Rajeev Sogani (C.A) &
Shri Rohan sogani (C.A.)
राजस्व की ओरसे/Revenue by: Ms. Runi Pal (Addl.CIT)

सुनवाई की तारीख/Date of Hearing :18/05/2023
उदघोषणा की तारीख/Date of Pronouncement: 24/07/2023

आदेश/ORDER

## PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee against the order of the ld. CIT(A)-4, Jaipur dated 20-12-2022 for the assessment year 2015-16 wherein the assessee has raised the following grounds of appeal.

"1. In the facts and circumstances of the case and in law, ld. CIT(A) has erred in, confirming the action of ld. AO, in passing the rectification order u/s 154 of the Income Tax Act, 1961on debatable issues which are outside the purview of section 154. The Action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the said order passed by ld. CIT(A).
2. In the facts and circumstances of the case and in law, ld. CIT(A) has erred in, confirming the action of ld. AO, in disallowing the ROC filing fee of Rs. 9,38,000, treating the same as apparent error in original order formed u/s 143(3). The Action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may

please be granted by quashing the said disallowance of Rs. 9,38,000 made by ld. AO and confirmed by ld. CIT(A).

3. In the facts and circumstances of the case and in law, ld. CIT(A) has erred in confirming the action of ld. AO in disallowing the Trade Mark fee of Rs. 16,000 treating the same as apparent error in original order. The Action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the said disallowance of Rs. 16,000 made by ld. AO and confirmed by ld. CIT(A).

2. During the course of hearing, the ld. AR of the assessee has not pressed the ground No. 3 for which the DR has no objection. Hence, the same is dismissed being not pressed.

3.1. Apropos Ground No. 1 & 2 of the assessee, brief facts of the case are that the assessee is a company engaged in the business of manufacturing of extruded PVC profile section etc. The assessee company filed its return of income on 30.10.2015 for the assessment year 2015-16 declaring a total income at Rs. 4,65,30,280/-. The AO completed the assessment u/s 143(3) of the Act vide order dated 21.07.2017 at a total income of Rs. 4,67,04,130/- by disallowing expenses of Rs. 1,73,849/-.Disallowance being insignificant, no appeal was filed by the assessee against the order of the AO. Thereafter, AO invoked the provisions of Section 154 of the Act, disallowed expenditure of Rs. 9,54,000 and computed total income of Rs. 4,76,58,130, *vide* order dated 08.04.2021. Against the order passed by the AO, under Section 154 of the Act, the assessee company preferred an appeal before the

ld. CIT(A) who dismissed the appeal of the assessee company by observing as under:-

> ''4.3 I have considered the facts of the case and written submissions of the appellant as against the observations/ findings of the AO in the assessment order for the year under consideration. The contentions/ submissions of the appellant are being discussed and decided as under:-
>
> > ''(i) Mistake is an ordinary word but in taxation law, it has a special significance. It is not an arithmetical or clerical error alone that comes with its purview. It comprehends errors which after a judicious probe into the record from which it is supposed to emanate are discerned. The word ''mistake'' is inherently indefinite in scope. It is mostly subjective mistake, capable of being rectified under sections 154 and is not confined to clerical or arithmetical mistakes. It is a settled position of law that any expenditure incurred which relate to increase in authorized capital are not allowable as revenue expenditure and I am of the considered view that the AO has rightly allowed the same under the provisions of Section 154 of the Act. Accordingly, the addition of Rs.954,000/- is confirmed and Ground of Appeal No. 1 to 4 are treated as dismissed.''

3.2 Being aggrieved by the order of the ld. CIT(A), the assessee carried the matter before the ITAT with the prayer that the ld. CIT(A) has erred in confirming the action of the AO in invoking the provisions of Section 154 of the Act and thus the present proceedings initiated u/s 154 of the Act should be quashed. To this effect, the ld. AR of the assessee filed the following written submission.

''GROUND NO. 1,2: INVOKING SECTION 154 AND DISALLOWANCE OF EXPENSES

SUBMISSIONS

1. ASSESSING OFFICER: Post completing the assessment u/s 143(3) *vide* orderdated 21.07.2017, ld. AO invoked section 154 and disallowed following expenses, observing that these expenses are of capital in nature and being mistake apparent on record, were required to be disallowed:

| Particulars | Total | Grand Total |
|---|---|---|
| ROC Fee -Increase in Authorised Capital | | |
| Filing Fee | 5,25,000 | |
| Stamp Duty Fee | 3,50,000 | |
| Franking Fee Payment | 63,000 | 9,38,000 |
| Trade Mark Fee | 16,000 | 16,000 |
| Total | | 9,54,000 |

2. Submission for ROC Filing Fee amounting to Rs. 9,38,000 is outside the purview of Section 154 as submitted in the ensuing paragraphs.

3. Provisionsof Section 154 for rectifying the order can be invoked only for mistakes apparent on record. The mistake should be one which does not require any deliberation, argument, etc. In general words the mistake should be such that even a blind person can lay hands thereon.

4. Reliance is placed on the judgment of Hon'ble Supreme Court in the case ofVolkart Brothers – 1971 AIR 2204, wherein it was held as under:
*"..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. As seen earlier, the High Court of Bombay opined that the original assessments were in accordance with law though in our opinion the High Court was not justified in going into that question. In Satyanarayan Laxminarayan Hegde and ors. v. MillikarjunBhavanappaTirumale(1) this Court while Spelling out the scope of the power of a High Court under Art. 226 of the Constitution ruled that an error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions cannot be said to be an error apparent on the face of the record. A decision on a debatable point of law is not a mistake apparent from the record-see Sidhamappav.. Commissioner- of Income-tax, Bombay(2). The power of the officers mentioned in S. 154 of the Income-tax Act, 1961 to correct "any mistake apparent from the record" is (1) [1960] 1 S.C.R. 890. (2) 21 I.T.R. 333. 35 undoubtedly not more than that of the High Court to entertain a writ petition on the basis of an "error apparent on the face of the record". In this case it is not necessary for us to spell out the distinction between the expressions 66 error apparent on the face of the record" and "mistake apparent from the*

*record". But suffice it to say that the Income tax Officer was wholly wrong in holding that there was a mistake apparent from the record of the assessments of the first respondent…"*

5. Further, reliance is also to be placed on the judgment of Hon'ble Supreme Court in the case of South India Bank Limited vs CIT [2001] 116 Taxman 364 (SC), wherein it was held as under:
*"Having regard to the difference of opinion among the Judges of the High Court on the principal question, it was clear that there was a debatable question and error on the face of the record which could not be corrected by invocation of the provisions of section 154….."*

6. Ld. A.O. while passing order u/s 154 disallowed the expenditure in relation to increase in authorized share capital. The disallowance of expenditure related to increase in authorized share capital is highly DEBATABLE ISSUE.

7. Following the increase in authorized capital, the paid-up share capital was increased from Rs. 3.00 crores to Rs. 8.20 crores as under:

| Particulars | (In Crores) |
|---|---|
| Paid up Issued Share Capital as on 01.04.2014 | 3.00 |
| Add: 22.00 lacs Shares of Rs. 10 issued in Initial Public Issue (IPO) at premium of Rs. 5 per shares | 2.20 |
| Add: 30.00 lacs Bonus Shares of Rs. 10 issued by capitalizing the reserve | 3.00 |
| Paid up Issued Share Capital as on 31.03.2015 | 8.20 |

The above details were duly furnished to ld AO, in 154 proceedings, vide letter dated 15.03.2021[CLC5-9].

8. Where the increase in authorized share capital is related to issue of Bonus Shares or where increase in share capital is to meet the Working Capital requirementsof the business, the expenditure for increase in authorised share capital is allowable.The decision of Hon'ble Supreme Court in the case of Punjab State Industrial Development Corporation Ltd [1997] 13 SCL 67 (SC) is only applicable, where increase in authorized capitalis for issuing share capital to be used in Capital Expenditure. Reliance is placed on the following judgments-

   8.1. General Life Insurance vs. CIT [2006] 286 ITR 232
   Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of - Assessment year 1991-92 - Whether expenditure incurred in connection with issuance of bonus shares is revenue expenditure - Held, yes

   8.2. Navi Mumbai SEZ (P.) Ltd. Vs. ACIT [2013] 152 ITD 828

Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of (Share capital, expenses to increase) - Assessment year 2008-09 - Whether where assessee incurred certain expenditure for increase in share capital, in view of fact that entire incremental share capital was used for purchase of trading stock, expenditure in question was to be allowed as revenue expenditure - Held, yes

9. Whether, increase in authorised share capital is for issue of bonus shares or to meet the working capital or capital expenditure, require detailed scrutiny. It requires deliberation and arguments. Different judicial views, as above, are prevailing in this regard.Therefore, by no stretch of imagination, it can be treated as mistake apparent on records.

10. Disallowance of expenditure in relation to increase in authorized share capital is out of purview of section 154 as the issues cannot be a mistake apparent on record.

11. The aforementioned legal position was submitted before the ld. CIT(A). However, ld. CIT(A), without any cogent basis, dismissed appeal of the assessee company.

12. Point by point rebuttal of the contentions raised by the ld. CIT(A) is tabulated hereunder:-

| Sl. No | Ld. CIT(A)'s Contentions | Our Rebuttals |
|---|---|---|
| 1 | Section 154 comprehends error, which, after a judicious probe into the records from which it is supposed to emanate are discerned. | • Ld. CIT(A) herself, has accepted the fact that for any mistake to be covered under Section 154, a judicious probe has to be done into the records. Word "Probe" being used by the ld. CIT(A) itself points out to the fact the same would not come under the purview of mistake "apparent" on record.<br>• Where any judicious probe is to be done, the same would not be covered under the purview of Section 154. There are other sections which are provided such as, Section 143 or Section 147, wherein right has been given by the statute to the Assessing Officer to "probe" into the expenses claimed by the assessee in detail. |
| 2 | The word "mistake" is inherently indefinite in scope. | • Ld. CIT(A) has erred in only considered the word mistake on a standalone basis rather reading the same with "apparent on record".<br>• Section 154 talks about mistake apparent on record that has to be a mistake which is apparent on the face of the record, without involving any debatable question of law.<br>• If the said mistake is not mistake apparent on record, then that cannot be within the scope of Section 154. |
| 3 | It is a settled position | • In this regard, before the ld. CIT(A) various case laws were |

| | | |
|---|---|---|
| | of law that any expenditure incurred, which relates to increase in authorised capital is not allowable as revenue expenditure. | submitted which are also provided hereinbefore..<br>• Accordingly, both the views are possible. Hence, the said disallowance is out of the purview of Section 154. |

In view of above ld. CIT(A) has erred in confirming the action of the ld. AO in invoking the provisions of Section 154 and accordingly, the present proceedings initiated under Section 154 should be quashed."

3.3 During the course of hearing, the ld. DR supported the order of the ld. CIT(A) and also filed reply vide letter No. Addl.CIT(DR)/ITAT/JPR/2022-23/99 dated 17-05-2023 as under:-

| Ground No. | Ground of Appeal | Reply |
|---|---|---|
| 1 | *In the facts and circumstances of the case and in law, ld. CIT(A) has erred in, confirming the action of ld. AO, in passing the rectification order u/s 154 of the Income Tax Act, 1961on debatable issues which are outside the purview of section 154. The Action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the said order passed by ld. CIT(A).* | The contention of the assessee is not acceptable as the issue on which addition were made in the order passed u/s 154 of the Act are not debatable. Further, the ld. CIT(A) while passing the order u/s 250 of the Act clearly stated in para 4.3 of the order on page 5 that ''Mistake is an ordinary word, but in taxation law, it has a special significance. It is not an arithmetical or clerical error alone that comes within its purview. |
| 2. | *In the facts and circumstances of the case and in law, ld. CIT(A) has erred in, confirming the action of ld. AO, in disallowing the ROC filing fee of Rs. 9,38,000, treating the* | The ld. CIT(A) while passing order observed that ''it is a settled position of law that any expenditure incurred which relates to increase in authorized |

| | | |
|---|---|---|
| | *same as apparent error in original order formed u/s 143(3). The Action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the said disallowance of Rs. 9,38,000 made by ld. AO and confirmed by ld. CIT(A).* | capital are not allowable as revenue expenditure and I am of the considered view that the AO has rightly allowed the same under the provision of Sec. 154 if the Act.''.Furtyher in the case of Brooke Bond India Ltd. vs CIT (SC) 225 ITR 798 and in the case of Punjab State Industrial Development Corporation Ltd. vs CIT (SC) 225 ITR 702 held that expenditure incurred on account of ROC filing for issuing of share is of capital nature. Therefore, the claim of the assesee is not tenable. |
| 3. | *In the facts and circumstances of the case and in law, ld. CIT(A) has erred in confirming the action of ld. AO in disallowing the Trade Mark fee of Rs. 16,000 treating the same as apparent error in original order. The Action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the said disallowance of Rs. 16,000 made by ld. AO and confirmed by ld. CIT(A).* | In the order passed u/s 154 of the Act, the AO disallowed total Rs.44,000/- on account of trade mark fee debated for Rs.16,000/- which was paid to Registrar of Trademark, reason are better known to the assessee However, these expenses are not allowable as these expenditure are of enduring nature for long term benefit of business thus not allowable as revenue expenditure as these expenditure relate to the sheets and molding manufacture and sold by the assessee company. Therefore, the claim of the assesse is not acceptable and liable to be rejected accordingly. |

3.4 We have heard both the parties and perused the materials available on record including the case laws cited by the respective parties. In this appeal, the

assessment was completed u/s 143(3) vide order dated 21-07-2017 at a total income of Rs.4,67,04,130/- by disallowing expenses of Rs.1,73,849/- for which no appeal was filed by the assessee being insignificant disallowance before the ld. CIT(A). It is also noted that the AO thereafter invoked the provisions of Section 154 of the Act by computing total income of Rs.4,76,58,130/- and thus disallowed expenditure of Rs.9,54,000/- vide order dated 08-04-2021 for which the assessee against invoking Section 154 of the Act by the AO preferred appeal before the ld. CIT(A) who dismissed the appeal of the assessee. The crux of the issue in this appeal is with respect to invoking of Section 154 of the Act by the AO in the case of the assessee and subsequently confirmed by the ld. CIT(A) with his following observation :-

> 4.3…'' (i) Mistake is an ordinary word but in taxation law, it has a special significance. It is not an arithmetical or clerical error alone that comes with its purview. It comprehends errors which after a judicious probe into the record from which it is supposed to emanate are discerned. The word ''mistake'' is inherently indefinite in scope. It is mostly subjective mistake, capable of being rectified under sections 154 and is not confined to clerical or arithmetical mistakes. It is a settled position of law that any expenditure incurred which relate to increase in authorized capital are not allowable as revenue expenditure and I am of the considered view that the AO has rightly allowed the same under the provisions of Section 154 of the Act. Accordingly, the addition of Rs.954,000/- is confirmed and Ground of Appeal No. 1 to 4 are treated as dismissed.''

It is also noted that the ld. AR of the assessee in his written submission rebutted the contentions of the ld. CIT(A) in a tabulated form as under:-

| Sl. No | Ld. CIT(A)'s Contentions | Our Rebuttals |
|---|---|---|
| 1 | Section 154 comprehends error, which, after a judicious probe into the records from which it is supposed to emanate are discerned. | • Ld. CIT(A) herself, has accepted the fact that for any mistake to be covered under Section 154, a judicious probe has to be done into the records. Word "Probe" being used by the ld. CIT(A) itself points out to the fact the same would not come under the purview of mistake "apparent" on record.<br>• Where any judicious probe is to be done, the same would not be covered under the purview of Section 154. There are other sections which are provided such as, Section 143 or Section 147, wherein right has been given by the statute to the Assessing Officer to "probe" into the expenses claimed by the assessee in detail. |
| 2 | The word "mistake" is inherently indefinite in scope. | • Ld. CIT(A) has erred in only considered the word mistake on a standalone basis rather reading the same with "apparent on record".<br>• Section 154 talks about mistake apparent on record that has to be a mistake which is apparent on the face of the record, without involving any debatable question of law.<br>• If the said mistake is not mistake apparent on record, then that cannot be within the scope of Section 154. |
| 3 | It is a settled position of law that any expenditure incurred, which relates to increase in authorised capital is not allowable as revenue expenditure. | • In this regard, before the ld. CIT(A) various case laws were submitted which are also provided hereinbefore..<br>• Accordingly, both the views are possible. Hence, the said disallowance is out of the purview of Section 154. |

It is also noted that whether to disallow or not the expenditure named ROC filing fee amounting to Rs.9,38,000/- is outside the purview of Section 154 of the Act as provisions of Section 154 of the Act for rectifying the order can be invoked only for making mistake apparent on record. Further, it is also noted that whether the expenditure in relation to increase in authorized share capital is of capital expenditure or revenue expenditure is out of the purview of Section 154 of the Act because this issue is not a mistake apparent on record. It is also noteworthy to mention that the rebuttal

as made by the assessee against the observation of the ld. CIT(A) in tabulated form (supra) indicate that invocation of section 154 of the Act as made by the AO in the case of the assessee is not justifiable because Section 154 talks about mistake apparent on record that has to be a mistake which is apparent on the face of the record without involving any debatable question of law. Hence taking into consideration the entire facts of the case, the Bench does not concur with the findings of the ld. CIT(A) and the Ground No. 1 and 2 of the appeal of the assessee is allowed.

4.0 In the result, the appeal of the assessee is partly allowed

Order pronounced in the open court on 24 /07/2023.

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|---|---|
| Sd/- | Sd/- |
| (राठोड कमलेश जयन्तभाई ) | (डॉ.एस.सीतालक्ष्मी) |
| (RATHOD KAMLESH JAYANTBHAI) | (Dr. S. Seethalakshmi) |
| लेखा सदस्य / Accountant Member | न्यायिकसदस्य / Judicial Member |

जयपुर / Jaipur
दिनांक / Dated:- 24/07/2023
*Mishra
आदेश की प्रतिलिपिअग्रेशित / Copy of the order forwarded to:

1. The Appellant- Dhabriya Polywood Limited, Jaipur.
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-1, Jaipur.
3. आयकरआयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No. 78/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar