

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: B: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.2933/Del/2022
Assessment Year: 2012-13

Dariyav Singh, Village Chindauri Tappa, Lawar, P.O & Tehsil Sardhana, Meerut, UP 250001 PAN J VXPS 1029 C	vs.	ITO Ward -1(3), Meerut
(Appellant)		(Respondent)

For Assessee :	None
Revenue For :	Shri Shankar Gupta, Sr. DR

Date of Hearing :	13.06.2023
Date of Pronouncement :	01.08.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of Ld. NFAC, New Delhi dated 01.11.2022 for AY 2012-13.

2. The grounds of assessee are as follows:-

1. That the A.O. was not competent to rectify the order of Principal CIT, Ghaziabad who has issued Form No. 5 if any mistake pointed by the A.O., same can be rectified by the Pr. CIT, Ghaziabad. Therefore, CIT(A), is in error in dismiss the appeal.

2. That declaration filed by the assessee on Form No. 2 and deposited through Form No. 3 which was dully accepted by the Pr. CIT, Ghaziabad, after obtaining the report from A.O. and Addl. CIT, Range - 1, Meerut, Therefore, it cannot be said that the mistake pointed out by the A.O. and he is not competent to rectify the same. Therefore, CIT(A) is in error to dismiss the appeal of the assessee on incorrect fact and law.

3. When the appeal was called for hearing neither the assessee nor any authorized representative appeared nor any adjournment application has been filed despite several notices. However, or perusal of the appeal records and impugned order, we find that the appeal can be disposed of ex-parte qua assessee after hearing the arguments of Id. Senior DR. Therefore we proceed to adjudicate the appeal ex-parte qua assessee.

4. From the grounds raised before Id. CIT(A) as well as before us the main contention of appellant is that the A.O. was not competent. to rectify the order of Principal CIT, Ghaziabad who has issued Form No. 5 if any mistake pointed by the A.O., same can be rectified by the Pr. CIT, Ghaziabad. Therefore, CIT(A), is in error in dismiss the appeal. It is also been contended by the appellant that declaration filed by the assessee on Form No. 2 and deposited through Form No. 3 which was dully accepted by the Pr. CIT, Ghaziabad, after obtaining the report from A.O. and Addl. CIT, Range - 1, Meerut, Therefore, it cannot be said that the mistake pointed out by the A.O. and he is not competent to rectify the same. Therefore, CIT(A) is in error to dismiss the appeal of the assessee on incorrect fact and law.

5. The Id. Senior DR supported the action of the Assessing Officer and submitted that as per the question no. 46 in the clarification dated 4.03.2020 issued by the CBDT, the DA can amend his order under clause 5 to rectify any apparent errors. Hence the claim of the assessee that the order passed u/s. 5(2) of VSVS scheme is conclusive is not correct. Because in the case under reference there is apparent error with regard to rate at which tax is chargeable.

6. On careful consideration of above submission first of all, we find it appropriate to take note of some undisputed facts of the matter. We note that as per letters 13.06.2023 of ITO, Ward-1(1)(3) Meerut and written submissions of Id. Senior DR in this case form no. 5 under VSVS scheme was issued by the Id. PCIT Ghaziabad on 13.01.2021 and the Assessing Officer by way of invoking provisions of section 154 of the Act passed impugned order on 20.09.2022 rectifying the tax calculation error in the form 5 issued by Id. PCIT. The main contention of assessee is that the Assessing Officer is not validly empowered and entitle to rectify or modify form no 5 issued by Id. PCIT as per hierarchy of the Departmental structure therefore rectification order is invalid and bad in law and should be held as without jurisdiction and not sustainable as per provisions and scheme of the Act. On being asked by the bench the Id. Senior DR could not assist us as to under which provision the Assessing Officer was empowered to invoke provisions of sec 154 of the Act to rectify the order passed by his super senior officer i.e. Id. PCIT.

7. In our humble view form no. 5 dated 13.01.2021 under VSVS scheme was issued by the Id. PCIT, Ghaziabad and the Assessing Officer rectified tax calculation mistake in the same form by invoking provisions of sec 154 of the Act on 20.09.2022. The Assessing Officer is not validly entitled and empowered to rectify mistake of his super senior officer therefore we are inclined to hold that impugned rectification order dated 20.09.2022 u/s. 154 of the Act is without jurisdiction, invalid and bad in law thus the same is not sustainable and we set aside the same. Sole grievance of assessee is allowed.

8. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 01.08.2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER
Dated: 01st August, 2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi