

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER  
AND  
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**ITA Nos. 35 & 36/JODH/2015  
Assessment Years: 2006-07 & 2007-08**

M/s Karnawat International Pvt. Ltd., Kalpana Kunj, Rajnagar PAN: JDHKO1239A	Vs	Income Tax Officer, Ward-1, Rajsamand
Appellant / Assessee		Respondent / Revenue

Assessee by	Sh. Rohan Mittal, Advocate
Revenue by	Ms. Nidhi Nair, JCIT-DR
Date of hearing	10.08.2023
Date of pronouncement	11.08.2023

**ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

These two appeals were heard together with the approval of ld. AR and ld. DR as the facts are identical. We take the ITA No. 36/Jodh/2015 A.Y. 2007-08, as a lead case.

**ITA No. 36/Jodh/2015**

**Asstt. Year: 2007-08**

2. This is an appeal filed by the Assessee against the order of ld. Commissioner of Income Tax (Appeals), Udaipur dated 11.11.2014 for assessment year 2007-08 emanating from the Assessing Officer's order under section 154 of the Act dated

16.12.2016. The grounds of appeal raised by the assessee are as under:-

*“1. Under the facts & circumstances of the case and in law, the Ld. CIT(A) has erred in upholding the order of Ld. ITO rejecting the application of the assessee under Section 154 r.w.s. 155 (11A) of the Act.*

*2. Appellant craves leave to add / alter any grounds of appeal before the disposal of appeal.”*

**Submission of Ld. AR**

3. The ld. AR submitted that the Assessing Officer has erred in rejecting the application under section 154. The ld. AR submitted that a lenient view needs to be taken. The ld. AR read out section 155(11A) of the to explain the provisions.

**Submission of Ld. DR**

4. The ld. DR submitted that the assessee has filed an application beyond a period of four years. She also submitted that the amendment was brought w.e.f. 13.07.2006. Hence, it is not applicable for this year.

**Findings & Analysis**

5. The only issue for our consideration is whether Assessing Officer was right in rejecting assessee’s application under section 154 r.w.s. 155( 11A) of the Act.

5.1 The assessee had claimed exemption under section 10B of the Act. Assessee is a exporter for the A.Y. 2006-07 & 2007-08. During the assessment proceedings, the Assessing Officer made a disallowance of Rs. 13,47,897/- on the ground that the sale proceeds were not received in convertible foreign exchange within six months which was the statutory time allowed. However, subsequently, the assessee received the amounts in convertible foreign exchange in India on 09.06.2007, 14.11.2007 and 31.03.2008. Assessee filed evidences of the receipt of the sale consideration before the Assessing Officer. Assessee filed a rectification application under section 154 r.w.s. 155(11A) of the Act. The AO rejected the application stating therein that there is no mistake apparent on record. The ld. CIT(A) confirmed the same. Neither the AO nor the CIT(A) has doubted the receipt of impugned amounts in convertible foreign exchange on the date mentioned. Section 155(11A) of the Act is reproduced hereunder:-

**“155....**

**[(11A)** *Where in the assessment for any year, the deduction under section 10A or section 10B or section 10BA has not been allowed on the ground that such income has not been received in convertible foreign exchange in India, or having been received in convertible foreign exchange outside India, or having been converted into convertible foreign exchange outside India, has*

*not been brought into India, by or on behalf of the assessee with the approval of the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange and subsequently such income or part thereof has been or is received in, or brought into, India in the manner aforesaid, the Assessing Officer shall amend the order of assessment so as to allow deduction under section 10A or section 10B or section 10BA, as the case may be, in respect of such income or part thereof as is so received in, or brought into, India, and the provisions of section 154 shall, so far as may be, apply thereto, and the period of four years shall be reckoned from the end of the previous year in which such income is so received in, or brought into, India.]”*

6. Thus, as per section 155(11A), if the assessee receives export consideration in convertible foreign exchange subsequently then the AO needs to amend the assessment order so as to allow deduction under section 10B of the Act. It is also mentioned in the section that time limit to rectify the order under section 154 shall be reckoned from the end of the previous year in which such sum is so brought in India. In this case, assessee claimed that assessee received amounts in India on 09.06.2007, 14.11.2007 and 31.03.2008. The assessee filed an application u/s 154 r.w.s. 155(11A) on 8.10.2012. It is observed that the assessee filed an application under section 154 r.w.s. 155(11A) of the Act after the

period of four years from the end of the financial year in which the amounts have been brought in India. The exemption provisions have to be strictly interpreted as held by Hon'ble Supreme Court in the case of ***State of Gujarat vs. Arcelor Mittal Nippon Steel India Ltd.*** Civil Appeal No. 7710-7714 of 2021 date of order 21.01.2022, The relevant part of the same is reproduced as under:

*“14.1 While the exemption notification should be liberally construed, beneficiary must fall within the ambit of the exemption and fulfill the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise.*

*14.2 It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. An exception and/or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in industrial policy and the exemption notifications.*

*14.3 The exemption notification should be strictly construed and given meaning according to legislative intendment. The Statutory provisions providing for exemption have to be interpreted in the light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions.”*

6.1 Similar view has been taken by Hon'ble Supreme Court in the case of ***Dileep Kumar And Company & Ors***, Civil Appeal No.

3327 of 2007. In this facts and circumstances of the case, respectfully following stricter interpretation rule, we agree with the Assessing Officer that rectification application is not maintainable and therefore, Assessing Officer's order under section 154 is upheld.

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**Asstt Year: 2006-07**

7. The assessee filed an application under section 154 r.w.s. 155(11A) of the Act on 08.10.2012. As per the assessee, he had received export consideration in convertible foreign exchange on 31.01.2007. Thus, even for A.Y. 2006-07, the application under section 154 was filed beyond the period of four years. Therefore, the AO had rightly rejected the application. Our findings in para 4 of ITA No. 36/Jodh/2015 will apply *Mutatis Mutandis* to this appeal.

8. In the result, the appeals of the assessee is dismissed.

Order pronounced on 11<sup>th</sup> August, 2023.

*Sd/-*

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Dated: 11/08/2023

*Sh.*

*Sd/-*

**(DR. DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

Copy to:

1. The Appellant
2. The Respondent
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4. The CIT(A)
5. The DR
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Asstt. Registrar

Jodhpur Bench