

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC "B" BENCH: BANGALORE**

SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.371/Bang/2023
Assessment Year: 2013-15

Pallasanna Krishna Subramanian (HUF), Villa No.492, Adarsh Palm Retreat, Outer Ring Road, Bellendur, Bengaluru. PAN - AAKHP 4675 A	Vs.	The Asst. Commissioner of Income Tax, Circle-4(2)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sripada M, C.A
Respondent by	:	Shri Ganesh R Gale, Standing Counsel for Dept. (DR)

Date of Hearing	:	16.08.2023
Date of Pronouncement	:	22.08.2023

O R D E R

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order dated 21.03.2023 vide DIN No.ITBA/NFAC/S/250/2022-23/ 1051048309(1) passed u/s 250 of the Income-tax Act, 1961 by the NAFC Delhi for the assessment year 2013-14 on the following grounds of appeal.

"1. The Commissioner of Income Tax Appeals, National Faceless Assessment Centre, Delhi, although decided the appeal on merit, however erred in observing that the appeal filed by the Appellant is barred by limitation as filed beyond the prescribed period.

The Appellant submit that as per Hon'ble Supreme Court's order in Miscellaneous Application No.21 of 2022 & Others, the period between 15.03.2020 till 28.02.2022 shall be excluded for computation of

limitation and all assessee's would have limitation period of 90 days from 01.03.2022 i.e. up to 29.05.2022. The Appellant submit that it has filed appeal on 26.02.2022 (against order 19.02.2020 whose original limitation period was 21.03.2020) which is within the extended period of limitation i.e.29.05.2022 and hence appeal shall be treated as filed within limitation period.

2. The CIT(A) erred in confirming the action of AO in rejecting the application for rectification u/s 154 of the I.T. Act filed against the intimation order passed u/s 143(1) of the I.T. Act and assessing the income at Rs.48,78,460/- as against income of Rs.35,41,368/- declared by the Appellant in its return.

3. The CIT(A) erred in confirming the action of AO in rejecting the rectification application u/s 154 of the IT Act on the ground that there is no mistake apparent from record.

The Appellant submits that, income under the head Income From Business or Profession of Rs.13,37,089/- declared by the Appellant is considered twice i.e.26,74,178/by the AO in the assessed income, which constitutes a mistake apparent from record rectifiable u/s 154 of the Act.

4. The CIT(A) erred in confirming the action of AO in rejecting the rectification application u/s 154 of the IT Act on the ground that the rectification application was filed beyond the time limit of four years from the date of order passed u/s 143(1) of the Act.

The Appellant submits that it has filed various rectification applications before the AO and the limitation period was computed by the AO from the last rectification application filed on 03.10.2019 ignoring the earlier rectification application filed which were not disposed off by him; and hence as per the facts and circumstances of the case and in law, the Appellant has filed the rectification application u/s 154 of the IT Act within the four year's period and same shall be decided on merit.”

2. The brief facts of the case are that the assessee is a HUF having source of income from trading in derivatives and other instruments, capital gain, income from house property and income from other sources. The gross total income of the assessee was Rs.36,51,368/- and claimed deduction under Chapter VI A of Rs.1,10,000/-. Accordingly, the return of income declared of Rs.35,44,370/- and filed return of income on 29/07/2013. The return of income of the assessee was processed u/s 143(1) of the Act and assessed income at Rs.48,78,460/-. Against which, the assessee filed rectification application on 04/07/2024 u/s 154 of the Act, which was processed on 07/08/2014 denying the rectification sought by the assessee. The

assessee filed again rectification on 11/11/2014, it was also processed by the CPC on 27/11/2014 denying the rectification sought by the assessee. Again, the assessee filed rectification on 28/02/2015, which was transferred to the jurisdictional AO on 09/03/2015. Accordingly, the assessee filed rectification application before the jurisdictional AO on 13/11/2016 stating the reasons along with the earlier applications. The assessee further filed rectification application on 31/10/2019 and also filed letter dated 30/09/2019 which was disposed of by the AO on 09/02/2020 by observing that the same income disclosed by the assessee twice cannot be considered u/s 154 of the Act and further observed that the application for rectification filed by the assessee is beyond the time limit. The reason given for filing rectification application by the assessee is that the speculative income of Rs.13,37,089/- has been filled in the return of income in two different places which while processing the return considered twice as income of the assessee, one under the head 'income from business and profession' and other under the head 'speculative income'. The assessee filed appeal before the CIT(A) and CIT(A) also upheld the order of the AO. Aggrieved from the above order, the assessee filed appeal before the ITAT.

4. The Id.AR submitted that the assessee while filing Income-tax return, speculative income has been entered at two different columns and while processing the return this has been considered twice by the CPC and assessee filed rectification applications many times within the time allowed as per sec. 154 of the Act. These rectification u/s 154 have not been considered by the CPC. Before the jurisdictional AO a rectification application dated 22.12.2015 was filed on 13.01.2016 u/s

154 of the Act and further a rectification application dated 30.09.2019 was filed on 03.10.2019 which has been wrongly dismissed by the AO by observing that it is beyond the time limit and the application can not be considered us 154. The assessee was compelled to file again and again rectification application for not adjudicating the issue as per sec. 154 of the Act. The assessee filed return synopsis, which is as under:-

“The Appellant is an HUF having source of income from trading in derivatives. The Appellant, for the subject year, filed its return of income on 29th July 2013 declaring the total income of Rs. 35,41,368/- The Return of the Appellant was processed and the intimation under section 143(1) of the Income Tax Act, 1961 ("Act") was received from Central Processing center ("CPC") on 29th April 2014 assessing the total income of the Appellant at Rs. 48,78,460/-.

2 The Appellant filed several rectification applications under section 154 of the Act until an Order under section 154 of the Act, dated 1 9th February 2020, was received from the learned Assistant Commissioner of Income Tax, Circle 4(2)(1), Bengaluru, rejecting the Appellant's rectification application and assessing the total income at Rs. 48,78,460/.

3 The crux of the rectification applications filed by the Appellant is given below:

3.1. During the year under consideration, the Appellant has earned profit from speculative business from trading in derivatives and other instruments.

3.2. Since the Appellant has not maintained the books of account, the Appellant has correctly shown the details of gross receipts from speculative business in 'Schedule P&L Profit & Loss Account' under "No Accounts case" category. The relevant screenshot from the ITR is given below:

NO ACCOUNT CASE	51	In a case where regular books of account of business or profession are not maintained, furnish the following information for previous year 2012-13 in respect of business or profession		
	a	Gross receipts	51a	1337089
	b	Gross profit	51b	1337089
	c	Expenses	51c	0
	d	Net profit	51d	1337089

3.3. Furrher, while filing the details of income under the head Income from Business or Profession in its return of income in 'Schedule BP - Computation of Income from business or profession', the said amount was disclosed under speculative business. The relevant screenshot from the ITR is given below:

B	Computation of income from speculative business			
38	Net profit or loss from speculative business as per profit or loss account	38		1337089
39	Additions in accordance with section 28 to 44DA	39		0
40	Deductions in accordance with section 28 to 44DA	40		0
41	Profit or loss from speculative business (38+39-40)	B41		1337089

(please refer page 12 of Paperbook - ITR)

3.4. The Appellant wishes to iterate that the same amount of Rs. 13,37,089/- is shown as gross receipts in Profit Et Loss account first and thereafter shown as taxable income in Schedule BP (Computation). We hasten to inform the Hon'ble Bench that, the Income tax return filing utility auto populates the total income and taxable income based on the details entered in other schedules of ITR. The Income tax return utility has correctly captured this income once and accordingly the return of income was filed showing business income of Rs. 13,37,089/-

3.5. However, during the processing of return of income u/s 143(1) of the Act by CPC, the above taxable income is considered twice resulting in double addition of same income.

Relevant extract of the CPC Intimation dated 29th April 2014 is given below:

आय कर संगणना INCOME TAX COMPUTATION (IN RUPEES)				
क्र. संख्या	विवरण	विवरण देने वाले शीर्ष	करदाता द्वारा आय विवरण में दिए गये	संशोधन 143(1) के अर्धीन संगणित
Sl.No.	Particulars	Reporting Heads	As Provided by Taxpayer in Return of Income	As Computed Under Section 143(1)
1		वेतन से आय INCOME FROM SALARY	0	0
2	आय शीर्ष	गृह संपत्ति से आय INCOME FROM HOUSE PROPERTY **	19,52,210	19,52,210
3	HEADS OF INCOME	कारबार या पुरा से लाभ और हानि INCOME FROM BUSINESS OR PROFESSION **	13,37,089	26,74,178

(Please refer Page no. 31 of Paperbook)

3.6. In order to rectify the above mentioned mistake apparent on record, the Appellant has been filing rectification application u/s 154 of the Act.

4. Chronology of the events showing the rectification applications filed and Orders received:

Sl No	Particulars	Relevant Date	Remarks	Annexure In Paperbook
1	Date of filing of Income tax return	29-07-2013	Business Income shown at Rs. 13,37,089	Annexure 1
2	ITR Processed u/s 143(1) by CPC with demand of Rs. 4,83,530 (CPC Intimation no. CPC/1314/A4/1403025754)	29-04-2014	Business Income shown double at Rs. 26,74,178	Annexure 3
3	Rectification Request filed (1st time online) against above referred CPC Intimation no. CPC/1314/A4/1403025754	04-07-2014	NA	Annexure 4
4	Rectificaton application processed & Order u/s 154 passed by CPC with no change in demand of Rs. 4,83,530 (CPC Intimation no. CPC/1314/U4/1407505211)	07-08-2014	Business Income shown double at Rs. 26,74,178	Annexure 5
5	Rectification request filed (2nd time online) for mistake apparent in CPC Intimation no. CPC/1314/U4/1407505211	11-11-2014	NA	Annexure 6
6	Rectificaton application processed & Order u/s 154 passed with no change in demand of Rs. 4,83,530 (CPC Intimation no. CPC/1314/U4/1422241182)	27-11-2014	Business Income shown double at Rs. 26,74,178	Annexure 7
7	Rectification request filed (3rd time online) for mistake apparent in CPC Intimation no. CPC/1314/U4/1422241182	28-02-2015	NA	Annexure 8
8	Rectification request transferred to Jurisdictional Assessing Officer	09-03-2015	NA	Annexure 9
9	Rectification request dated 22/12/2015 made with Assessing Officer (Physical filing)	13-01-2016	NA	Annexure 10
10	Rectification request dated 30/09/2019 made with Assessing Officer (Physical filing) at Bangalore	03-10-2019	NA	Annexure 11
11	AO Passed 154 Order [this is the Order Appealed before Hon'ble ITAT after CIT(A)]	19-02-2020	Business Income shown double at Rs. 26,74,178. Rejected Appellant's application	NA

Brief of Assessing Officer's Order dated 191" February 2020 and Appellant's submission

- *With respect to issue of whether it is a mistake apparent on record*

5.1. *The learned Assessing Officer rejected application filed by the Appellant by mentioning that the rectification sought by the Appellant is not a mistake apparent on record which can be rectified u/s 154 of the Act. The relevant extract from the Order of the Assessing Officer is given below:*

In the Return of Income riled, You have admitted business income of Rs. 13,37.089j . under the Column No Account Case and you have also admitted speculation business income of Ps. 13,37,089/, Now you have made claim that Same income was considered twice, while processing return u/s 143{1). The provision u/s 154 enables to rectify the mistake which is apparent from record, where as this issue could not be considered as mistake apparent from record and therefore the petition filed under reference is hereby rejected.

5.2. *Perusing the above, your Honour's will appreciate that, the learned Assessing Officer is of the view that the Appellant itself has declared same income twice. This assumption is erroneous as the Appellant has shown the said income only once in 'Schedule BP - Computation of income from Business or Profession'. The same income is shown in Profit Et Loss account as part of the disclosure requirement of ITR.*

5.3. *We hasten to inform your honour' s that ITR preparation utility downloaded from the Income tax department has considered this income only once at the time of filing the ITR. This is the reason why the income tax return filed by the Appellant shows correct income.*

5.4. *Based on the above, it is humbly submitted that the mistake of taxing the same income twice by the tax department be considered as mistake apparent on record and rectified under section 154 of the Act.*

5.5. *Without prejudice, even if it is doubly disclosed in the Income Tax return, considering the fact that the Appellant has paid due taxes and filed ITR by considering the income only once (rightly so), the learned AO is duty bound to make necessary rectification in the Intimation. It is submitted that the AO should not take advantage of ignorance of the Appellant to his right.*

5.6. *In support of the above, we wish to rely on Circular No 14 (XL 35) of 1955 dated 11th April 1955 issued by CBDT. The relevant extract from the Circular is given below:*

3. Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assesseees on whom it is imposed by law, officers should :---

(a) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other:

(bt freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs.

5.7. *Hon'ble Kolkata ITAT has in its judgement of Madhabi Nag v/s ACIT has placed reliance on The CBDT Circular No.14 of 1955 dated 11.04.1955 and has taken a view that the officers of the department must not take advantage of ignorance of the assessee about his rights and it is their duty to assist the tax payer in every reasonable way particularly in the matter of claiming and securing reliefs. Brief facts of the case were that the assessee for the A.Y.2005-06 had filed the return of income declaring Long Term Capital Gain on sale of shares of Rs.12,32,025/-. The AO issued an intimation u/s 143(1) of the Income Tax Act, 1961 (Act) dated 03.02.2010 accepting the income returned by the assessee. The assessee filed an application u/s.154 of the Act before AO pointing out that the Long Term Capital Gain on sales of shares was wrongly offered to tax and that the same was exempted u/s 10(38) of the Act. The assessee prayed that apparent error u/s 10(38) of the Act be rectified. The AO, however, did not accept the contention of the assessee and neither was it accepted by the Ld CIT(A) on the pretext that no revise return was filed. Whereas the Hon'ble ITAT has held that the department cannot take the benefit of the ignorance of the assessee and should help the taxpayer for claiming and securing reliefs.*

The relevant wordings of the Hon'ble ITAT verdict is as under:

"I have heard the rival submissions. The CBDT Circular No. 14 of 1955 dated 11.04. 1955 has taken a view that the officers of the department must not take advantage of ignorance of the assessee about his rights and it is their duty to assist the tax payer in every reasonable way particularly in the matter of claiming and securing reliefs. In my view therefore the revenue authorities ought not to have rejected the application u/s 154 of the Act on the ground that the assessee has not filed the revised return of income. The CIT(A) has placed reliance on the decision of the Hon'ble supreme Court in the case of Goetz (India) Ltd. (supra) for sustaining the order of the AO u/s 154 of the Act. The Hon'ble Supreme Court in it's decision rendered in the case of Goetze (India) Ltd vs CIT has clarified that the appellate authorities under the Act have the power to consider the claim even if the business of the revised return of income. In my view, therefore, the claim of the assessee that Long Term Capital Gain is exempt u/s 10(38) of the Act has to be examined by the AO. It is seen from the order of AO u/s 154 of the Act that the AO wanted details of acquisition and proof of payment of STT. I therefore set aside the order of CIT(A) and remand the question of exemption of Long Term Capital Gain u/s 10(38) of the Act to the AO for fresh consideration. The assessee is directed to file necessary evidences before the AO to substantiate his claim. "

A copy of the above referred judgement is enclosed as Appendix 1 to this Submission. 6. Brief of Assessing Officer's Order dated 19th February 2020 and Appellant's submission

- With respect to validity of filing application within 4 years allowed u/s 154

6.1. The learned Assessing Officer has also mentioned that the application for rectification was not made within 4 years as the return was processed on 29th April 2014. The relevant extract from the Order is given below:

Further the petition seeking rectification u/s 154 to be filed within 4 years from the (date of return processed u/s 143(1)). In this case, . the return was processed on 29/04/2014 and the rectification application has also not filed within the time limit.

6.2. With respect to above averments of the learned Assessing Officer, we wish to mention that the learned AO has incorrectly considered the last application filed before him (dated 3d October 2019) in deciding the time limit of 4 years. The chronology of several rectification applications filed before the CPC and Assessing officer is mentioned in point 4 above. Perusing the table given under point 4 (SUPRA), your Honours' will appreciate that:

- the rectification application against the CPC Intimation no. CPC/1314/U4/1422241182 dated 27th November 2014 was filed by the Appellant on 28th February 2015 (refer Annexure 8 of Paperbook - Page no 42).*
- Thereafter, it is transferred to jurisdictional assessing officer on 9th March 2015.*
- Physical filing for the same was made before the Assessing Officer on 13th January 2016 (refer Annexure 10 of Paperbook - page no 45)*

• *One more application was filed on 3rd October 2019 before the Assessing Officer.*

6.3. *Since the application for rectification u/s 154 is filed well within the time limit of 4 years, the averments of the learned Assessing Officer that the application is filed after 4 years is erroneous.*

7. *Issue of filing Rectification Application on 154 Order passed by CPC instead of filing an Appeal before CIT(Appeal) against the first 154 Order.*

7. 1. *Foremost the Appellant wishes to mention that the 3rd rectification application (dated 28th February 2015) filed by the Appellant was against the 2nd rectification order passed by CPC u/s 154 of the Act (CPC Intimation no. CPC/1314/U4/1422241182 dated 27th November 2014).*

7.2. *This application was filed for the apparent errors found in the above referred CPC Intimation no. CPC/1314/U4/1422241182 dated 27th November 2014.*

7.3. *Furthermore, the Appellant wishes to highlight that the Appellant has preferred Appeal before National Faceless Appeal Centre after getting the first detailed Order dated 19th February 2020 from the Assessing Officer.*

7.4. *In this regard, the Appellant wishes to rely on the judgement of the Hon'ble Supreme Court in the case of Hindwire Industries 212 ITR 639 (SC) wherein it is held as follows: "What falls for consideration in the present case is the interpretation of the expression "from the date of the order sought to be amended" in sub-section (7) of section 154 as it stood then It is obvious that the word `order' has not been qualified in any way and it does not necessarily mean the original order It can be any order including the amended or rectified order....."*

In view of these authorities taking the view that the word `any' in the expression "order sought to be amended" would mean even the rectified order, we are satisfied that the High Court was wrong in setting aside the decision of the Tribunal....."

A copy of the above referred SC judgement is enclosed as Appendix 2 to this submission.

7.5. *Based on the above, it is Appellant's humble submission that the Appeal filed before the Hon'ble ITAT be allowed.*

8. *National Faceless Appeal Centre, although decided the appeal on merits, erred by observing that the Appeal filed by the Appellant is barred by limitation.*

8.1. *The Appellant had preferred Appeal before National Faceless Appeal Centre after getting the Order dated 19th February 2020 from the Assessing Officer.*

8.2. *The original limitation period for filing appeal before the NFAC was 21st March 2020.*

8.3. *However, as per Hon'ble Supreme Court's order in Miscellaneous Application No.21 of 2022 ft Others, the period between 15.03.2020 till 28.02.2022 shall be excluded for computation of limitation and all assessee's would have limitation period of 90 days from 01.03.2022 i.e. up to 29.05.2022.*

8.4. *The Appellant has filed the Appeal before NFAC on 26th February 2022 which is well within the extended period of limitation i.e.*

*29th May 2022. Accordingly, it is prayed that the same shall be treated as filed within the limitation period.
It is appealed that these submissions be accepted by the Hon'ble Tribunal and justice be dispensed."*

5. In addition to the above, the assessee has filed an Affidavit dated 16/08/2023 stating the reasons for wrong offered income twice and he has also taken on oath that he did not have business income except the speculative business income of Rs.13,13,089/- during the year under consideration. The Affidavit is placed on the record.

6. The Id.DR relied on the order of the lower authorities and he submitted that the CIT(A) has rightly dismissed the appeal of the assessee by observing that the assessee filed rectification application beyond the period of four years, which cannot be entertained. He further submitted that there is no mistake apparent from the records of the revenue and it clearly shows that the mistake is on part of the assessee.

7. After hearing rival contentions, I note that the assessee has filed income-tax return declaring the total income of Rs.35,41,370/- including the speculative business of Rs.13,37,089/-, which has filed in the income-tax return under the two different columns. The CPC has considered the same income twice. In this regard, the assessee has also filed an Affidavit before the ITAT stating the reason for wrong filling under the two different columns and he also stated that there is no other business income except the speculative income as declared in the Income-tax return at two different places, whereas income arose one time from the said source. This is evident from the computation filed by the assessee at paper book page no.28. Considering the entire

submission of the assessee and Affidavit filed, that the assessee has wrongly filled one income at two different places.

8. The assessee filed rectification application within the time as listed out (Supra) in the assessee's submission and the rectification application has not been accepted by the CPC as well as by the AO and the CIT(A) has also not accepted even if that is the mistake committed by the assessee while filing the return which can be corrected later on either by filing revised return of income or by way of application u/s 154 of the Act. In this regard, the assessee filed application u/s 154 of the Act which should have been accepted. The assessee itself accepted that it was a mistake on their part then it will also come u/s 154 of the Act for rectifying the mistake as per records. Further I note that the CIT(A) has dismissed the appeal of the assessee by observing that the rectification application filed by the assessee is time barred, this view is also not correct. The assessee filed rectification applications first, second and third time within the time. The Hon'ble Supreme Court interpreted the word 'order' sought to be amended used in Sec. 154(7) as relied by the Id.AR in his return submission at para No.7.4. Therefore, considering the judgment of Hon'ble Apex Court in the case of Hindwire Industries (cited supra), the assessee filed rectification application within the time, to which the AO ought to have considered. In view of this, I hold that the rectification application filed by the assessee is well in time and it is a mistake apparent on record which should have been rectified by the Revenue Officer on the request made by the assessee. In view of this, the appeal of the assessee is allowed and the AO is directed to compute the correct income as per law.

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

Order pronounced in the open court on 22nd August, 2023.

**Sd/-
(Laxmi Prasad Sahu)
Accountant Member**

Bangalore,
Dated 22nd August, 2023
Vms

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.

By order

Asst. Registrar/ITAT, Bangalore