

आयकर अपीलीय 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: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 220/JP/2023
निर्धारण वर्ष/Assessment Years : 2013-14

Renu Khunteta A27/13, Kanti Chandra Road Bani Park, Jaipur	बनाम Vs.	ITO, Ward 3(2), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGRPK 5507 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. H. M. Singhvi (CA)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 26/07/2023
उदघोषणा की तारीख / Date of Pronouncement: 24/08/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 16/02/2023 [here in after (NFAC)/ Id. CIT(A)] for assessment year 2013-14 which in turn arise from the order dated 13.03.2018 passed under section 154 of the Income Tax Act, by National e-Assessment Centre, Delhi.

2. In this appeal, the assessee has raised following grounds: -

“1. That the Learned CIT(A) went wrong in confirming the order passed by AO u/s 154.

2. That the learned CIT(A) went wrong in taking the assessed income as adjusted income. Adjusted income has been defined in sub-section (2) of section 115JC.

3. That the appellant be permitted to add, alter, amend or withdraw any of the grounds of appeal before or at the time of hearing.”

3. Succinctly, the fact as culled out from the records is that the return of income declaring total income at Rs. Nil/- was filed on 30th September, 2013 which was processed u/s 143(1). The case was selected for scrutiny and notice u/s 143(2) was issued on 04.09.2014 by ITO Ward 3(1), Jaipur and duly served upon the assessee. The assessment was completed by making disallowance of interest of Rs. 4,10,898/- and the assessment was completed on 29.01.2016. On completion of the assessment the Id. AO noted that the case of the assessee was selected under CASS and assessment was completed determining total income of Rs. 3,83,014/- and tax was charged at Rs. 18,850/- under the normal provision of the Act. On perusal of records Id. AO observed that assessee has adjusted total turnover at Rs. 22,20,998/- (Rs. 3,83,014/- + deduction u/s. 80IA). Considering the provision of section 115JC(1) of the Act the assessee is liable for minimum alternate tax @ 18.% % on Rs. 4,23,212/- whereas the assessee on completion of the assessment upon determination of income

tax was computed at Rs. 18,550/-. This mistake being apparent the Id. AO has issued a notice dated 23.05.2017 and in response the assessee did not file any defense reply. Based on these facts Id. AO passed an order u/s. 154 of the Act determining the tax liability at Rs. 4,23,212/-.

4. Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A)/NFAC. A propose to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

"5.1 To rectify the mistake being apparent from records on the issue of tax u/s. 115JC, notice u/s 154 of the Income-tax Act, 1961 was issued to the assessee on 23.05.2017. In the notice u/s 154 issued by the AO, the particulars of mistake proposed to be rectified are as under.

"Particulars of mistake proposed to be rectified

On perusal of assessment record, it is observed that the assessment order under section 143(3) for the assessment Year 2013-14 made on 29.01.2016 at total income of Rs. 3,83,014/- after deduction of Rs. 18,37,984/- u/s 80IA of the Act and tax was charged at Rs. 18,850/- under normal provisions whereas adjusted total income u/s 115JC was Rs. 22,20,998/- (Rs 383014+1837984) and tax was to be charged at Rs. 4,23,212/- u/s 115JC(1) as AMT. This resulted into under charged of tax and interest amounting to Rs. 5,41,854/-. The same is proposed to be rectified u/s 154 of the Income-tax Act. 1961."

5.2 Subsequently, the AO passed impugned rectification order u/s 154 on 13.03.2018 wherein the AO charged income tax @18.5% on adjusted total income Rs. 22,20,998/- as per provisions of 115JC(1) of the Act. The relevant portion of impugned order u/s 154 is as under:

"2. The perusal of records revealed that the adjusted total income to the assessee was Rs 22,20,998/- (Rs 3,83,014+ deduction of Rs. 18,37,984 u/s 801A). As per provision of section 115JC(1) of the Income tax Act, 1961, notwithstanding anything contained in the income-tax act, where the regular income tax payable for a previous year by a person, other than a company, is less than the alternate

minimum tax (AMT) payable for such previous year, the adjusted total income shall be deemed to be the total income of that person for such previous year and he shall be liable to pay income tax on such total income at the rate of 18.5%. Thus, the tax on total income of Rs. 22,20,998/- was to be charged at Rs. 4,23,212/- instead of Rs. 18550/- as the tax in AMT was in higher side than normal provision tax.

3. To rectify the mistake being apparent from records, notice u/s 154 of the Income-tax Act, 1961 was issued to the assessee on 23.05.2017 fixing the case for hearing on 06.06.2017, which was duly served upon the assessee through registered post. In response to above notice, the assessee neither attended the hearing nor any written submission was filed. From the above, it is evident that the assessee has nothing to say in this regard and has 'No objection' to the proposed rectification.

Considering all facts & circumstances of the case, the income tax on total income of Rs. 22,20,998 is charged at the rate: 18.5% as per provision of section 115JC(1) of the Income tax Act, 1961 Le. Rs. 4,23,212/-, Charge interest u/s 234A, 234B and 234C of the Income-tax Act, 1961 as per rules."

6. Ground No. 1 and 3 of the appeal is that the order u/s. 154 is bad in law and on facts as the adjusted total income being debatable.

6.1 The appellant contended that the order passed u/s 154 is totally bad in law and illegal since the AO who passed the order u/s./ 143(3) allowing the claim u/s. 801A also issued the notice u/s. 154 for disallowing the claim u/s. 801A, hence, it was change of opinion and for the change of opinion no order can be made u/s 154; that it was not open to the ITO to go into the true scope of the relevant provisions of the Act in a proceeding under s. 154 of the I. T. Act, 1961; that a mistake apparent on the record must be an obvious and patent mistake and not something which can be established by the long-drawn process of reasoning on points on which there may conceivable be two opinions; that a decision on a debatable point of law is not a mistake apparent form the record.

6.2 On careful consideration of the facts of the case, assessment order u/s. 143(3), impugned order u/s. 154, submissions of the appellant and material available on record, the contentions of the appellant are not tenable.

6.2.1 As per provision of section 115JC(1) of the Act, notwithstanding anything contained in the income-tax act, where the regular income tax payable for a previous year by a person, other than a company, is less than the alternate minimum tax (AMT) payable for such previous year, the adjusted total income shall be deemed to be the total income of that person for such previous year and he shall be liable to pay income tax on such total income at the rate of 18.5%. In this case, as per material available on record, it is a fact that the regular income tax payable by the appellant is less than the alternate minimum tax (AMT) payable for such previous year. Further, as per material available on record in this case, as per provisions of 115JC(2), the adjusted total income can be calculated. The appellant

in the submission dated 25.07.2021 admits that "Here in this case no two opinions were possible". Thus, I am of the view that mistake apparent on the record sought to be rectified by the AO on the issue of tax payable u/s. 115JC is an obvious and patent mistake and which does not require to be established by the long-drawn process of reasoning on points on which there may conceivably be two opinions. Therefore, these grounds are dismissed.

6. In Ground No. 2 of the appeal, the appellant contended that the AO erred in taking the adjusted total income u/s. 115JC at Rs. 22,20,998/- as against adjusted income shown in the computation.

6.1 The AO has taken the adjusted total income of the assessee at Rs. 22,20,998/- (total assessed income i.e., Rs. 3,83,014 plus deduction of Rs. 18,37,984 u/s 801A). The appellant contended that in view of provisions of sec. 115JC(2), the adjusted total income is returned income (which is NIL in this case) as increased by the deduction claimed under chapter VIA, which is Rs. 18,37,984/- as deduction u/s. 801A, and the total adjusted income thus will be Rs. 18,37,984/-. I do not find merit in the contention of the appellant. In view of provisions of sec. 115JC(2), the adjusted total income is total income before giving effect to the chapter XII-BA plus increased by the deduction claimed under chapter VIA. Nowhere in the sec. 115JC, it is stated that total income before giving effect to the chapter XII-BA is the returned income as declared by the assessee. There is no concept of Book Profit for calculation of alternate minimum tax payable and the adjusted total income u/s. 115JC. The total income before giving effect to the chapter XII-BA shall be the total income as assessed and which has reached the finality. The appellant has not submitted as to why the total income before giving effect to the chapter XII-BA is the returned income as declared by the assessee. The appellant has not also submitted any decisions of Hon'ble Tribunal or Courts to support her view or to prove that there are two opinions on this issue. Therefore, I held that the AO is correct in taking the amount of adjusted total income u/s. 115JC (2) at Rs. 22,20,998/- and in determining the alternate minimum tax payable u/s. 115JC(1) accordingly. Ground No. 2 is accordingly dismissed.

7. In the result, the appeal of the appellant is dismissed."

5. As the assessee not found any favour from the appeal so filed before the Id. CIT(A), the assessee preferred the present appeal on the grounds as reproduced at para 2. The Id. AR appearing on behalf of the assessee has placed their written submission which is extracted in below;

“May it please your honour. The following are the facts and submissions of the case:-

1. The assessee is an individual and also a proprietor of M/s Indocot and is merchant exporter of Cotton Yarn & Textiles. She is also engaged in the business of peration of windmill situated at Harshnath, Dist. Sikar in Rajasthan. The assessee filed return of income on 30/09/2013. Copy of computation is enclosed alongwith Audit Report u/s 80IA. (See P.B. Pg. No. 4-11). As per the computation of income, the total income of the assessee was Rs. 1839652/- and the assessee claimed deduction under chapter VI A of Rs. 1839652/- including 1837984/- u/s 80IA and after taking deduction the return income was NIL.

2. The case was selected through CASS in order to examine large deduction claimed under chapter VI A. The issue has been examined and necessary evidences were placed on records. This note has been given in the assessment order itself.

3. Thereafter, the AO issued notice u/s 143(2) & 142(1) and the reply was given vide letter dt. 24/08/2015.

4. Thereafter, the AO by noting on the proceeding sheet demanded certain information fixing the date of hearing on 02/09/2015.

5. Reply was filed on 02/09/2015. Copy of the letter is enclosed. (See P.B. Pg. No.12) The next date was fixed on 10/09/2015 asking further more information.

6. On 10/09/2015, the assessee filed reply along with the information asked by the AO. (See P.B. Pg. No. 13)

7. Thereafter, the assessment was completed u/s 143(3) on 29/01/2016 and the final computed income was as under:-”

Gross total income:-		1839652
Add:- Disallowance as per para:-		<u>410898</u>
	Total income	2250550
Less:-		
	80C	13536
	80D	15000
	80TTA	1016
	80IA	1837984 <u>(1867536)</u>
	Total Income	383014/-

8. The AO issued notice u/s 154 signed by the same ITO who has passed the order u/s 143(3). (See P.B. Pg. No. 14)

9. The assessee replied to the notice u/s 154 vide letter dt:- 21/08/2017. The copy of the letter is enclosed. (See P.B. Pg. No. 15) 10. Thereafter on change of incumbent, the order was passed by the newly posted AO dt:-13/03/2018. Copy of the same is enclosed.(See P.B. Pg. No.16-17)

11. An appeal was filed after receiving the order u/s 154 against the order u/s 143(3). Copy of Form 35 is enclosed. (See P.B. Pg. No.18-19) This appeal was not maintainable.

12. The assessee again filed an application u/s 154 which was rejected by the AO. (See P.B. Pg. No.20-

21) 13. The assessee after taking advice from the new Counsel preferred appeal against the order u/s 154

dt:- 13/03/2018 after the delay of 567 days. Form 35 is enclosed. (See P.B. Pg. No.22-23)

The Learned CIT(A) also confirmed the order of the AO stating that the assessment order u/s 143(3). impugned order u/s 154, submissions of the appellate and material available on records, the contentions of the appellate are not tenable.

Looking the facts narrated above it a change of opinion and the matter is debatable which cannot be rectified in view of the following decisions:-

1. T.S. Balaram, Income Tax Officer v. Volkart Brothers & Ors. (82 ITR 50 (SC)). Copy enclosed. (See P.B. Pg. No. 24-27)

Ground No. 2

The AO has wrongly taken the adjusted total income of Rs. 2220998/-(total assessed income Rs. 383014 plus deduction of Rs. 1837984/- u/s 801A) after considering the disallowance of Rs. 410898/- made u/s 143(3) whereas the adjusted total income as per Sec. 115JC (2) should be Rs. 1837984/-(Rs. 0 plus deduction claimed under chapter VI A u/s 80IA of Rs. 1837984) as per the return income. The disallowance/addition made in the order u/s 143(3) Rs. 383014/- will not be considered in the calculation of adjusted income as defined u/s 115JC(2). Relevant provisions of Sec. 115JC(2) are reproduced as under:-

"115JC(2) Adjusted total income referred to in sub-section (1) shall be the total income before giving effect to this Chapter as increased by-

(i) deductions claimed, if any, under any section (other than section 80P) included in Chapter VI-A under the heading "C.-Deductions in respect of certain incomes";

(ii) deduction claimed, if any, under section 10AA; and

(iii) deduction claimed, if any, under section 35AD as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no

deduction under section 35AD was allowed in respect of the assets on which the deduction under that section is claimed.

Since the total income of the assessee is less than 20 lakhs hence, the assessee is not covered u/s 115JC(2) of the Income Tax Act, 1961. Hence, it is a debatable issue not covered u/s 154 for rectification.

Prayer

It is therefore, most respectfully prayed that the appeal may be allowed.”

6. The Id DR is heard who has relied on the findings of the lower authorities and relying on the finding of the Id. CIT(A) recorded at para 6 supported the order of the Id. CIT(A). The Id. DR further submitted that there cannot be two opinions so far as to charge of AMT u/s. 115JC.

7. We have heard the rival contentions and perused the material placed on record. The bench noted that the present appeal is filed against the order dated 13.03.2018 which was passed u/s. 154 of the Act. After passing of that order the assessee preferred another application u/s. 154 of the Act contending that the disallowance / addition made in the order u/s. 143(3) for an amount of Rs. 3,83,014/- cannot be considered for calculation of adjusted income as defined u/s. 115JC(2) of the Act. Since the present appeal is against the order dated 13.03.2018 upon which no such contentions were raised and the Id. AR of the assessee fairly admitted that the assessee has preferred that appeal on that second 154 application filed by the assessee which was rejected by the Id. AO and that the assessee

wanted to contest that appeal. Keeping that right alive since the present appeal is against the first order passed u/s. 154 of the Act for which no such contention was raised before the lower authority and therefore, the present appeal devoid of any merit so far as to the determination of tax liability u/s. 115JC of the Act is concerned. A propose to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below :

6.2.1 As per provision of section 115JC(1) of the Act, notwithstanding anything contained in the income-tax act, where the regular income tax payable for a previous year by a person, other than a company, is less than the alternate minimum tax (AMT) payable for such previous year, the adjusted total income shall be deemed to be the total income of that person for such previous year and he shall be liable to pay income tax on such total income at the rate of 18.5%. In this case, as per material available on record, it is a fact that the regular income tax payable by the appellant is less than the alternate minimum tax (AMT) payable for such previous year. Further, as per material available on record in this case, as per provisions of 115JC(2), the adjusted total income can be calculated. The appellant in the submission dated 25.07.2021 admits that "Here in this case no two opinions were possible". Thus, I am of the view that mistake apparent on the record sought to be rectified by the AO on the issue of tax payable u/s. 115JC is an obvious and patent mistake and which does not require to be established by the long-drawn process of reasoning on points on which there may conceivable be two opinions. Therefore, these grounds are dismissed.

The Id. AR of the assessee did not controvert the finding of the Id. CIT(A) based on the current provision of the Act and therefore, we see no reason to interfere in the finding of the Id. CIT(A). Based on this observation we see no merits in the grounds of appeal raised by the assessee and since the issue has already been considered by the Id. CIT(A) on merits and the

Id. AR did not place on record any material to support that the finding of the Id. CIT(A) is not in accordance with the law. Therefore, in the result the appeal filed by the assessee stands dismissed.

In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 24/08/2023.

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठौड कमलेश जयंतभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 24/08/2023

*Ganesh Kumar, PS

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

1. The Appellant- Renu Khunteta, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 3(2), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 220/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar