

**THE INCOME TAX APPELLATE TRIBUNAL  
DEHRADUN BENCH, NEW DELHI  
Before Sh. C. N. Prasad, Judicial Member  
AND  
SHRI M. BALAGANESH, Accountant Member  
(Through Video Conferencing)**

ITA No. 4571/Del/2016  
(Assessment Year: 2010-11)

Regent Healthcare Ltd, E/7/2, UPSIDC Industrial Area, Sealqui, Dehradun (Appellant) <b>PAN: AADCR2192J</b>	Vs. ACIT, Circle-2, Dehradun (Respondent)
--	--

Assessee by :	None
Revenue by:	Shri Amar Singh Rana, Sr. DR
Date of Hearing	21/09/2023
Date of pronouncement	15/09/2023

O R D E R

**PER M. BALAGANESH, A. M.:**

1. None appeared on behalf of the Assessee despite issuance of notice on various occasions. In fact notice sent to the assessee at the address mentioned by the Assessee in Form No. 36 returned un-served. Accordingly, there is no point of waiting for the presence of the Assessee for disposal of this appeal. Hence, we proceeded to dispose of this appeal on hearing of the Id DR and based on the material available on record.

2. The Assessee has raised the following grounds of appeal:-

*(1) That an Appellate Order dt. 10-5-16 confirming on assessment order 43(3) r.w.s. 154 of I.T. Act determining total tax liability of Rs. 475245/- u/s. 115JB is bad in law as also on facts. When an Assessment Order u/s. 143(3) has not been served to an assessee even till today. AND even when no notice u/s. 143(2) of I.T. Act has been issued and served to an Appellant.*

*(2) That learned AO has erred in invoking provisions of Section 154 of I.T. Act, 1961 for raising hudge demands u/s. 115JB of I.T. Act, 1961. Since non- charging of tax u/s. 115JB at the time of passing A.O. dt. 1-8-12 u/s. 143(3) (which has not*

*been served) does not constitute mistake apparent on records within the meaning of Section 154 of I.T. Act, 1961 in view of number of ratios laid down by judicial authorities. ORDER so passed u/s. 143(3) r.w.s. 154 may please be quashed in absence of Order u/s. 143(3) of I.T.Act. That learned CIT (App) further erred in confirming such an order u/s. 154 violating justice principles.*

*(3) That both the Authorities viz. Learned CIT (App) and learned Assessing Officer (A.O.) have erred in not appreciating facts and circumstances of case and material available on record.*

*(4) That learned A.O. erred in invoking provisions of Section 115JB of I.T. Act. That learned CIT (App) erred in confirming such an action which is void ab intio.*

*(5) That learned AO has been greivously erred in not affording reasonable opportunity of being heard before raising hudge demands of Rs. 475245/- u/s. 115JB of I.T. Act (including interest u/s. 234B of I.T. Act, 1961). That learned CIT (App.) erred in confirming such an unjustifiable demand including interest u/s. 234B of I.T. Act, 1961.*

*(6) That learned A.O. has erred in invoking provision of Section 115JB of I.T. Act, overlooking totally the objects of the legislature for inspiring assessee to establish the unit in Hilly Zone eligible area situated in certain special category states including Uttranchal state (vide amended notification no. 283/2006/F No. 142/30/2005/TPL/dt. 3-10-2006 and previous notification dt. 28-6-2004). Wherein 100% of profits and gains earned by such unit is not liable to tax for first ten assessment years or five assessment years as the case may be. When on other hand learned AO has granted deductin u/s. 801C of IT Act on the basis of such facts and materials explained vide letter dt. 7-12-2011 for A.Y. 2009-10 and other letters filed during regular assessment proceedings of A.Y. 2009-10. Inspite of this Learned CIT (App) erred in not deleting such an unjustifiable demand resulting into sure ruination of an Appellant. WHEN notice u/s. 143(2)/ Assessment Order u/s. 143(3) have not been passed and served to an Appellant.*

*(7) That leanred A.O. has further erred in charging interest u/s. 234 B of I.T. Act, 1961 till the date of order i.e. 29-4-2013 u/s. 143(3) r.w.s. 154 of I.T. Act, 1961 WHEN original A.O. u/s. 143(3) was passed on 9-8-2012 (as per ITO but not served to assessee) when it was the mistake of learned A.O. for not charging such interest u/s. 234B of I.T. Act. Assessee should not be penalized for the interest u/s. 234B for the period 1-4-2010 to 29-4-2013 under any circumstances. Even otherwise also considering facts of case as cited supra, assessee has not committed any such default in discharge of its tax liability u/s. 115 JB of I.T. Act as assessee is not liable to 115JB tax liability in view of the grounds as cited supra. Interest so charged u/s. 234B may please be directed to be deleted in toto from justice angle. That Learned CIT (App) erred in confirming charge of such interest u/s. 234 B of I.T. Act.*

*(8) That both the authorities viz. learned AO and learned CIT (App) ought to have appreciated that provisions of Sec. 115JB does not apply to other entities such as individual / HUF / Firm etc. Hence it should not apply to: company also. Had Appellant's constitution would have been other than company assessee, it would not have been subjected to such a hudge demand. (9) That Appellant craves leave*

*to add / alter / amend / substitute / delete / withdraw any or all of the grounds of Appeal.*

*(10) That Appellant humbly prays that tax liability of Rs. 475245/- u/s. 115JB may please be directed to be deleted in toto from justice angle alongwith interest charged of 234B of I.T. Act, 1961 in view of the grounds as cited supra. ORDER so passed by Learned ACIT / CIT (App) may please be quashed in toto."*

3. The original assessment in this case was completed u/s 143(3) of the Act determining Nil income on 07.08.2012 under normal provisions of the Act. In the said order in para 3 it was mentioned that income of the Assessee is to be determined as per section 115JB of the Act. However, at the time of determination of income u/s 115JB of the Act, the Id AO omitted to determine the tax payable by the company. Accordingly, a notice u/s 154 of the Act was issued on 01.4.2013 to the Assessee company as to why the tax should not be determined u/s 115JB of the Act as it was omitted in the original assessment order construing it as a mistake apparent from the record within the section 154 of the Act.

4. On one occasion, the Id AR appeared and sought for adjournment before the Id AO and thereafter there was no representation from the side of the Assessee and accordingly, the Id AO proceeded to pass the assessment order u/s 154 of the Act dated 29.04.2013 determining the tax liability on the book profit of Rs. 20,37,101/- u/s 234B, 234C and 220(2) of the Act thereon. The Assessee preferred appeal before the Id CIT(A) who upheld the action of the Id AO. The Id CIT(A) however, granted partial relief in respect of interest charges u/s 234C of the Act.

5. Aggrieved the Assessee is in appeal before us.

6. We have gone through the rectification order passed u/s 154 of the Act and also the appellate order. We find that the Id AO having determined the income u/s 115JB of the Act in the original assessment proceeding omitted inadvertently to compute the tax and interest payable thereon. This apparently constituted a mistake apparent from the record warranting rectification u/s 154 of the Act, which was rightly done by the Id AO. This right action of the AO has been rightly upheld by the Id CIT(A), on which we do not find any infirmity. In our considered

opinion, the action of the lower authorities is directly in consonance with the provisions of the Act. Accordingly, the grounds raised by the Assessee are dismissed.

7. In the result, the appeal of the Assessee is dismissed.

Order pronounced in the open court on 15/09/2023.

-Sd/-  
**(C. N. Prasad)**  
**JUDICIAL MEMBER**

-Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 15/09/2023  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi