

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

**BEFORE: DR. S. SEETHALAKSHMI, JM  
&  
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

**ITA Nos. 119/Jodh/2021  
(ASSESSMENT YEAR- 2014-15)**

Shri Kailash Chandra A-6, Krishi Mandi, Barmer-344001.	Vs	ITO, Ward-1, Barmer.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. AALPC 4766 A</b>		

<b>Assessee By</b>	Shri Rajendra Jain-Adv.
<b>Revenue By</b>	Shri S.M. Joshi, JCIT-DR
<b>Date of hearing</b>	03/07/2023
<b>Date of Pronouncement</b>	22 /09/2023

**ORDER**

**PER: Dr. S. Seethalakshmi, JM**

The assessee has filed an appeal against the order of the National Faceless Appeal Centre, Delhi [herein after “NFAC/Ld.CIT(A)”] dated 29.10.2021 for the assessment year 2014-15.

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

- “1. That on the facts and in the circumstances of the case the order passed by the Ld CIT(A) is bad in law & bad in facts.*
- 2. That on the facts and in the circumstances of the case the order passed by the Ld CIT(A) grossly erred in sustaining the*

*validity of order passed u/s 154 by the Ld. AO as such, order passed U/s 154 was illegal and unjustified.*

*3. That on the facts and in the circumstances of the case the order passed by the Ld CIT(A) grossly erred in rejecting the legal & factual submission furnished by the assessee and arbitrary hold that the assessee was obliged to deduct TDS on rent paid as such holding & disallowance of deduction u/s 40(a)(ia) is outside the jurisdiction of Section 154 of the Act.*

*4. That on the facts and in the circumstances of the case the order passed by the Ld CIT(A) grossly erred in upholding the addition of Rs. 1,87,864/- made by ld. AO on account of disallowance of rent payment due to non-deduction of TDS u/s 194I of the Act.*

*5. That on the facts and in the circumstances of the case the order passed by the Ld CIT(A), NFAC without considered the provision of law and law decided by Hon'ble Court in judicial manner had recorded arbitrary findings which are either contrary or against the spirit of provision of section 154 of the Act.''*

3. Brief facts of the case are that assessment in the assessee's case was completed u/s 143(3) for AY 2014-15 by order dated 08-11-2016 assessing total income at Rs 7,40,430/-. Thereafter, the AO noticed that the assessee paid rent of Rs 1,87,864/- to M/s Rajasthan State Warehouse and failed to deduct tax u/s 194-I and on account of such failure, rent paid ought to have been disallowed u/s 40(a)(ia) of the Act. As this sum was not disallowed in assessment u/s 143(3), the AO sought to rectify this mistake by initiating rectification proceedings through issuing notice dated 11-09- 2019. As the assessee failed to

respond this notice, the AO inferred that the assessee had nothing to state against disallowance and therefore proceeded to pass order u/s 154 of the Act on 15-10-2019 making disallowance of Rs 1,87,864/- u/s 40(a) (ia) of the Act and enhancing the income to that extent. The relevant narration of the AO in his order u/s 154 of the Act dated 15-10-2019 is as under:-

“A show cause notice dated 11-09-2019 was given to the assessee which was duly served upon the assessee on the same date to which no compliance was made, neither any reply was filed either by the assessee or by the AR. It implies that the assessee has nothing to say in his favour.

Thus, considering the above facts and circumstances of the case, the cash payment of Rs.1,87,864/- is disallowed u/s 40a(ia) r.w.s. 194 of the I.T. Act, 1961 and added back to the total income of the assessee.”

4. Aggrieved, from the order of the AO passed u/s 154 of the Act, 1961 on 15-10-2019, the assessee filed an appeal before the ld. CIT(A) who after hearing the contention of the assessee dismissed the appeal of the assessee by observing as under:-

“4. The grounds and submissions of the appellant have been carefully considered. As per provisions of section 1941, any individual or HUF who is required to obtain Tax Audit Report is liable to deduct tax u/s 1941 on payments by way of rent for any building when such payment exceeds Rs 1,80,000/- during the previous year. In the instant case, the appellant paid rent exceeding Rs 1.80,000/- to Rajasthan State Warehouse Corp in the year relevant to AY 2014-15 but did not admittedly deduct tax u/s 1941 as the appellant even during the current proceedings never stated that he had

deducted tax. So there was a clear default which attracts disallowance u/s 40(a)(ia). There is no material to show that this issue was considered during assessment proceedings and the AO accepted the appellant's contentions that he was not liable to deduct TDS for any other reason or that he was covered under any other provisions so as not to be liable for disallowance u/s 40(a)(ia). It is true that under proviso to sec 201 and second proviso to 40(a) (ia), no disallowance is called for if the appellant had produced relevant certificate in compliance of proviso to sec 201 before the AO. When no such certificate was produced, the appellant cannot take a plea that the AO should not have disallowed the said sum u/s 40(a)(ia) on the ground that Rajasthan State warehousing Corp filed return showing the rent received. So, on facts and as per record, there was a clear case for disallowance u/s 40(a)(ia). No long drawn process of reasoning is required for disallowance of this sum u/s 40(a)(ia). Therefore, the appellant's reliance on Hon'ble Apex Court in the case of T.S. Balaram is misplaced. In the past, the issue in litigation in the cases of disallowance u/s 40(a) (ia) was the words used in this section 'paid' or 'payable' of the expenditure payments requiring tax deduction and it was then was a debatable issue. It was in that context, the Courts/Tribunals were holding that such disallowance u/s 40(a) (ia) cannot be made in a rectification order u/s 154. However, after the Hon'ble Supreme court's judgment in the case of Palam Gas Service vs Commissioner of Income-tax [2017] 81 taxmann.com 43 (SC), it is a settled law that word 'payable' occurring in section 40(a)(ia) not only covers cases where amount is yet to be paid but also those cases where amount has actually been paid. So there was no debatable issue on disallowance of rent u/s 40(a)(ia) for a clear default u/s 194 when the AO passed rectification order u/s 154. Accordingly, the order u/s 154 is upheld. 5. In the result, the appeal of the appellant is dismissed.”

5. During the course of hearing, the ld. AR of the assessee prayed that the ld. CIT(A) has erred in sustaining the action of the AO as to passing an order u/s 154 and confirming the disallowance made of Rs.1,87,864/- u/s 40(a)(ia) r.w.s. 194 of the I.T. Act, 1961 and thus added the same to the total income of the assessee.

6. Per contra, the ld. DR relied upon the order of the ld. CIT(A).

7. We have heard the both parties and perused the materials available on record. In this case, it is noted that the AO after examination and verification of documentary evidences, explanation and books of accounts had assessed the total income of the assessee at Rs.7,40,430/- by making addition of Rs.50,000/- in the order passed on 8-11-2016 u/s 143(3) of the Act. It is also noted the AO subsequently passed an order u/s 154 of the Act making disallowance of Rs.1,87,864/- u/s 40(a)(ia) of the Act and enhancing the income to that extent which has been sustained by the Id. CIT(A). It is worthwhile to mention as to when Section 154 of the Act is invoked by the assessing authority on the assessee and that is with a view to rectifying any mistake apparent from the record in the order passed by the AO. In this case, there appears no mistake apparent on record to make rectification in the order when the assessee had submitted the documents and evidences before the AO who had had examined them and thus made the addition of Rs.50,000/- in the hands of the assessee. During the course of hearing the Id. AR of the assessee relied upon the decision of ITAT Ranchi Bench in the case of Shri Sachin Sharma vs ACIT,Circle -3, Jamshedpur (ITA No. 260/Ran/2017 for the assessment year 2011-12 dated 30-11-2018 wherein the Bench allowed the appeal of the assessee by observing as under:-

“6. After considering the rival submissions, I find that the additions under appeal were made in a proceedings initiated u/s.154 of the Act. Section 154 allows rectification of a mistake apparent from the record. Thus, an issue for adjudication

of which Investigation of further facts, which is not on record is required or an issue on which two views are possible are clearly out of the ambit of section 154 of the Act.

7. In the instant case, it is observed that the Assessing Officer observed that Rs.9,60,672/- has been shown as outstanding liability on account of service tax in the balance sheet and finding that there was no evidence available of payment of the same with the time limit prescribed u/s.139(1) of the Act, added the same to the income of the assessee in view of the provisions of section 43B of the Act. It is an established position that disallowance u/s.43B can be made of an amount which has been claimed as deduction by the assessee. In other words, when deduction has not been claimed, question of making disallowance by invoking the provisions of section 43B does not arise.

8. In the instant case, no material has been brought on record to show that Rs.9,60,672/- as service tax expenditure was claimed by the assessee. Thus, disallowance u/s.438 can be made only of an amount which was a sum payable. The relevant law under the service tax was payable on cash basis. No material is available to show that the liability of Rs.9,60,672/- as service tax was incurred before the end of the relevant previous year under the service tax law. In the circumstances, in my considered view, the addition of Rs.9,60,672/- by invoking the provisions of section 43B in a proceeding u/s.154 of the Act is impermissible.

9. Further, the Assessing Officer has observed from the profit and loss account that a sum of Rs.15,53,218/- was debited under the head job work charges. By observing this, he held that the assessee was obliged to deduct ITDS thereon u/s.194C of the Act and consequently, added Rs.15,53,218/- on the ground of non-deduction of ITDS u/s.194C of the Act.

10. A perusal of provisions of section 194C of the Act shows that a person is liable to deduct ITDS when a contract for work is of an amount more than Rs.30,000/- or where payment for work is made to a person more than Rs.75,000/- during the financial year. The Assessing Officer has brought no material on record to show that either of the above condition was satisfied in the instant case. Therefore, it is not open to the Assessing Officer in a proceedings u/s.154 of the Act to hold that the assessee was obliged to deduct ITDS on job work and consequently, the disallowance made u/s.40(a)(ia) of the Act is outside the jurisdiction of section 154 of the Act. I, therefore, delete both the additions made by the Assessing Officer and allow the grounds of appeal of the assessee.

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

It is not imperative to repeat the facts of the case and the Bench taking into considering the facts as narrated by the assessee before the Bench during

hearing of the case as well as the submission of the order of ITAT Ranchi Bench in the case of Sachin Sharma vs ACIT, Circle -3, Jamshedpur, we feel that the issue question is duly covered by the order of ITAT Ranchi Bench (supra). Hence, respectfully following the order of the ITAT Ranchi Bench (supra), we do not concur with the findings of the ld. CIT(A) as to rectification u/s 154 of the Act is directed to be quashed. Thus the appeal of the assessee is allowed.

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

Order pronounced in the open court on 22 /09/2023.

Sd/-

Sd/-

(RATHOD KAMLESH JAYANTBHAI)  
ACCOUNTANT MEMBER

(DR. S. SEETHALAKSHMI)  
JUDICIAL MEMBER

Dated : 22/09/2023

*\*Santosh*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar  
Jodhpur Bench