

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.194/Ind/2023
(Assessment Year:2014-15)

ACIT-4(1) Indore	vs.	Prestige Feed Mills Ltd. 30, Jaora Compound Indore
(Appellant / Revenue)		(Assessee)
PAN: AABCP0412H		
Assessee by	Shri Ashish Goyal & N.D. Patwa, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	12.10.2023	
Date of Pronouncement	13.10.2023	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the Revenue is directed against the order dated 19.03.2023 of Commissioner of Income Tax(Appeal), National Faceless Appeal Centre, Delhi arising from order passed by the AO u/s 154 of the Income Tax Act for A.Y.2014-15. The Revenue has raised following grounds of appeal:

” (1) Whether on the facts and in the circumstances of the case, Ld. CIT (A) was justified to ignore the merits of the case and the fact that section 154 was correctly applied in this case.

(2) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition made by A.O. of Rs. 3,06,69,470/-, while himself holding that the issues are debatable.

(3) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition while incorrectly holding that the issues which were not under limited scrutiny can't be examined during rectification order.”

2. Ld. DR has submitted that the AO has passed the order u/s 154 in respect of some of the claims which are not allowable as per law became. As the assessee failed to produce the details of the expenditure and evidence of addition made to the fixed assets on which depreciation was claimed by the assessee. He has relied upon the order of the AO passed u/s 154 of the Act.

3. On the other hand, Ld. AR has submitted that the assessment in the case was completed u/s 143(3) on 20.10.2016 whereby the AO assessed the total income of the assessee at Rs.2,26,42,360/-(normal) and Rs.3,74,19,334/- (MAT) as against the return income of Rs.2,24,42,359/-(normal) and Rs.3,74,219,334/-(MAT). Thereafter, the AO passed the impugned order u/s 154 on 31.03.2021 whereby the AO has disallowed the claim of depreciation on fixed assets and expenditure on account of salary & wages under the head “Employee benefit Expenses” to the tune of Rs.3,06,69,470/-. Thus, Ld. AR has submitted that the order passed u/s 154 is beyond the jurisdiction and scope of section 154 of the Act as it is not a mistake apparent from the record but the AO has made reassessment in the garb of rectification of mistake. He has supported the impugned order of the CIT(A) and submitted that the CIT(A) rightly deleted the addition as all these issues were already examined by the AO while passing scrutiny assessment u/s 143(3) of the Act.

4. We have considered the rival submissions as well as relevant material on record. As it is apparent from the order passed by the AO u/s 154 of the Act that the same is in the nature of reassessment of scrutiny assessment already completed u/s 143(3) of the Act. The AO has nowhere stated in the impugned order that there is a mistake apparent from record but the AO taken up reassessment proceeding in the garb of order u/s

154 of the Act. The order passed by the AO u/s 154 is reproduced as under:

GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX DCIT/ACIT 4(1),IND			
To, PRESTIGE FEED MILLS LIMITED 35, JADRA COMPOUND Indore INDORE 452001, Madhya Pradesh India			
PAN: AABCP0412H	Assessment Year: 2014-15	Dated: 31/03/2021	DIN & Letter No : TTBA/COM/F/17/2020-21/1032031063(1)
Sir/ Madam/ M/s, Subject: Proceedings under section 154 - Letter			
ORDER UNDER SECTION 154/143(3) OF INCOME TAX ACT, 1961			
<p>The assessee was filed its return of income on 27.09.2014 declaring income of Rs. 1,83,12,708/- and revised return of Rs. 2,24,42,359/- & MAT of Rs. 3,74,219,334/- . The assessment u/s 143(3) of the Act, was passed on 20.10.2016 with assessed income of Rs.2,26,42,360/-(Normal) & Rs. 3,74,19,334/-(MAT).</p> <p>On perusal of order dated 20.10.2016, it was observed that as per clause no. 19 (Schedule of fixed assets)of the 3CD Report for the year ended 31st March 2014 and depreciation chart of fixed assets with computation of income, the assessee company made addition in the assets i.e Building, Furniture & Fittings, plant & machinery, Computer.</p> <p>Further, it was observed that the assessee company had not submitted any evidence of addition in the above mentioned assets. Thus, the addition of assets of Rs. 3,76,19,046/-(10705256+26913789) and claimed depreciation of Rs. 36,61,611/- on addition of the assets as per IT Act should be disallowed.</p> <p>Further, Scrutiny of case records revealed that assessee company had debited Rs. 2,35,78,320/- as Salary & wages under the head 'Employee benefits Expenses'(Note-22) and Rs. 71,21,150/- as travelling expenses under the head 'Other expenses'(Note-24)in profit and Loss account for the year ended 31st March 2014, but no details of expenditure of Salary & wages, travelling expenses were</p>			

found in the case record. Therefore above mentioned expenses of Rs. 30689470/- (23548320-7121150) were required to be added back in the assessee income.

Notice u/s 154 was issued to the assessee, however no reply received. Hence order is passed u/s 154 on the basis of material available on record.

Assessed Income (order dated 20.10.2016)	Rs.2,26,42,360/-(Normal)
	MAT Rs.3,74,19,334/-
Add:	Rs. 36,61,611/-
Add:	Rs. 3,06,69,470/-
Assessed Income after order u/s 154	Rs. /-5,69,73,441/-
	(Normal Income)
	MAT
	Rs.3,74,19,334/-

Give credit for prepaid taxes and adjusted amount. Charge interest as per law. Issue necessary forms.

सत्य प्रतिलिपि
पुस्तक
बहुमूल्य आयकर कायदा
6 (1) इन्डो

DHANENDRA PRASAD SHRIVASTAVA
DCIT(A)CIT 4(1),IND

5. Further the AO while passing the order u/s 143(3) on 20.10.2016 made a disallowance of Rs.2 lac on account of nonproduction of supporting bills and vouchers to support some of the expenses. Thus, it is manifest from the order passed u/s 154 that the AO has misconducted himself by passing reassessment order in the garb of proceedings u/s 154 of the Act. It is a classical example of misuse and abuse of process of law by the AO. The CIT(A) has considered this issue as under:

“I have examined the rectification order, assessment order and the submissions of the Appellant carefully. The assessment order u/s 143(3) was passed on 20.10.2016. Thereafter, rectification order u/s 154 was passed on 31.03.2021 after elapsing almost five years of the period. After passing the assessment order, the A.O. all of sudden after five years, found that some documents were not submitted and hence rectification order was passed. The AO in the assessment order has mentioned that :-

"a. Large other expenses claimed in P & L - Replies submitted by AR of assessee dated 17.10.2016 (I) under pointed 4 and 17.10.2016 (II) under points 1 and 2 are accepted as satisfactory on the specific expenses heads mentioned.

b. Large any other deduction claimed in P & L - Reply submitted by AR of assessee dated 06.10.2016 is accepted as satisfactory."

The case was under Limited Scrutiny and the AO examined and satisfied with the reply/explanation of the Appellant on the issues, which were taken up under Scrutiny, as clearly mentioned in the assessment order. The AO categorically accepted the explanation of the Appellant on the issues of 'Large other expenses' and 'Large any other deductions' debited in the P & L account. Further, books of accounts of the Appellant are audited. It is also to be mentioned that the issues which were not under limited scrutiny can't be examined/scrutinized during the assessment proceedings and also during the rectification order.

For the documents not found in the record, order u/s 154 cannot be made. It is the discretion of the AO that whether he keeps the documents after verification in the assessment records or return back to the Appellant after verification and satisfaction with the submission. Further, there is no clerical or any glaring mistakes i.e. apparent from the record for which order under section 154 was made. The issue raised in the order u/s 154 are debatable in nature and moreover, the AO has examined these issues during the assessment proceedings and further books of accounts are audited. Further, after five years no one can say that Appellant has not submitted reply during the assessment proceedings due to the only fact that the documents were not found in the record. Further, no appropriate/effective opportunities have been given to the appellant for the rectification order as evident from the rectification order and submission of the Appellant. Having the above facts and

circumstances of the case, I am of the considered view that the rectification order u/s 154 is not justifiable and hence the demand raised under the order u/s 154 is hereby deleted. Thus, these grounds of appeal are allowed.”

Accordingly in the facts and circumstances of the case we do not find any error or illegality in the impugned order of the CIT(A) same is upheld.

6. In the result, the appeal of revenue is dismissed.

Order pronounced in the open court on 13.10.2023

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 13.10.2023

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

Sd/-

(VIJAY PAL RAO)
Judicial Member

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*