

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)
BEFORE SH. M. BALAGANESH, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 3037/Del/2022, A.Y. 2019-20

Sh. Sachin Kataria C/o R.M.trading Co., House No. 60, Rishi Colony, Panipat PAN : AFQPK7143B	Vs.	Dy. CIT, CC, Karnal
Appellant		Respondent

Assessee by	Shri S. Krishanan, Adv.
Revenue by	Shri Anuj Garg, Sr. DR

Date of hearing:	12.10.2023
Date of Pronouncement:	30.10.2023

ORDER

Per Anubhav Sharma, JM :

The appeal is preferred by the Assessee against the order dated 26.10.2022 of Commissioner of Income Tax (Appeals)-3, Gurgaon (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal no. 10783/2021-22 arising out of an appeal before it against the order dated 16.09.2021 passed u/s 154 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the DCIT, CC, Karnal (hereinafter referred as the Ld. AO).

2. The facts in brief that the assessee is an individual engaged in the business of trading in textile goods. He suffered a survey operation at his

business premises at Panipat on 29.11.2018, wherein he surrendered an amount of Rs. 81,44,600/- against excess stock. The assessee claims that the said amount was offered as business income in the return of income dated 31st October, 2019. During assessment proceedings, the same were accepted as business income however subsequently, the AO exercised powers of rectification u/s 154 of the Act and by order dated 16.09.2021 enhanced the tax liability by invoking the provisions of Section 115BBE of the Act instead of tax at normal rate u/s 143(3) of the Act. The assessee assailed the same before the CIT(A) wherein plea was taken that the rectification without notice was not valid and specific reliance in that regard was made on section 154(3) of the Act alleging that the mandatory procedure under the said section was not followed. Ld. CIT(A) decided the appeal with following relevant findings in para 4 and 5 and dismissed the appeal of assessee;

3. The assessee is in appeal raising following grounds ;

“1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in dismissing the Assessee’s appeal, despite admitting that no notice as contemplated in section 154(3) of the Act was ever issued to the Assessee without enhancing his liability as determined through order dated 16.09.2021.

2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in not returning any finding as to Grounds 2 and 3 raised before him.

Assessee seeks leave to add to, modify, forego, or otherwise alter all or any of the grounds of appeal as above. “

4. Heard and perused the record.

5. In the course of hearing it came up heavily from Id. AR that since no mandatory notice was issued while there was an enhancement in the tax demand the exercise of jurisdiction was irregular. It was also submitted that even otherwise u/s 154 such a rectification could not have been done. Ld. DR has

however supported the findings of Ld. Tax Authorities. It also transpires that against the regular assessment u/s 143(3), the assessee is already in appeal.

6. In the case of **Chockalingam & Meyyappan Vs. CIT (1963) 48 ITR 34** Hon'ble Supreme Court has precisely held that principle of natural justice has to be followed by the tax authorities and section 154(3) of the Act thus provides that amendment/rectification which has effect of enhancement of an assessment or reducing a refund or otherwise increasing the liability of the assessee shall not be made unless the authority concerned gives notice to the assessee of its intention to do so. Therefore, it is obligatory under the statute to issue notice by the Assessing Officer to give a reasonable opportunity of being heard to the Assessee. Giving thoughtful consideration to the matter on record, we are of the considered view that as the assessment order is dated 08/09/2021 so the non-issuance of the notice u/s 154(3) is a procedural irregularity and the issue is of prejudice only and such a prejudice has to be presumed and same can be rectified by giving opportunity to the AO to serve notice upon the assessee, and exercise powers u/s 154.

7. Accordingly impugned order dated 16.09.2021 is set aside and Ld. AO will decide the issue afresh giving a due opportunity of hearing to the assessee. Accordingly, **the appeal of assessee is allowed for statistical purposes.**

Order pronounced in the open court on 30th October, 2023.

Sd/-

**(M. BALAGANESH)
ACCOUNTANT MEMBER**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 30.10.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI