

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR
(VIRTUAL COURT)
BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 100/Jodh/2022
Assessment Year: 2010-11

Sh. Ravinder Chaudhary,
Dhundhai, Mount Abu
307501, Rajasthan

[PAN: AANPC 0677L]
(Appellant)

Vs. Income Tax Officer,
Mount Abu, Rajasthan

(Respondent)

Appellant by : Sh. T. C. Gupta, Adv.
Respondent by : Sh. Laxman Singh Gurjar, Sr. DR

Date of Hearing : 20.11.2023
Date of Pronouncement : 22.11.2023

ORDER

Per Dr. M. L. Meena, AM:

The captioned appeal has been filed by the assessee against the order of the Id. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 28.06.2022 arising out of Order passed u/s 154 dated 11.07.2016 in respect of Assessment Year: 2010-11.

2. At the outset, the Id. counsel for the assessee submitted that the Id. CIT(A) was not justified in dismissing the appeal of the assessee by sustaining the cryptic, non speaking and illegal order passed u/s 154 by the Assessing Officer. The counsel stated that the assessment was completed on 18.03.2013 at total income of Rs.5,48,770/- by making a lump sum addition of Rs. 1,50,000/-. The appellant assessee filed application u/s 154 dated 06.06.2016 is rejected by AO by non speaking order dated 11.07.2016 which has been sustained by the Id. CIT(A). He pleaded that the order passed u/s 154 by the AO is deserves to be quashed on account of denial of reasonable opportunity of being heard to the assessee, and case was wrongly taken under compulsory scrutiny.

3. Per contra, the Id. DR supported the impugned order and contended that under the provisions of law, the AO has allowed such reasonable opportunity of being heard to the appellant under the order passed u/s 154 but “there are no mistakes apparent from the record” he pleaded that the impugned order may be sustained.

4. Heard both the sides, perused record and the impugned order. We find that the Id. CIT(A) has granted a reasonable opportunity of being heard to the appellant assessee and passed a speaking order while sustaining

the order of the Id. AO passed u/s 154 by observing vide para 5 of the impugned order is as under:

“5. Decision

I have carefully perused the Grounds of appeal, statement of facts, order passed u/s 154, submissions made by the Appellant and evidences on record.

The grounds raised in the appeal pertain to only one issue that the order passed u/s 154 of the Act is bad in law and deserves to be quashed. The Appellant has made a detailed submissions which have been summarized at para 4 above.

I have considered the submissions of the Appellant and also the order passed by the AO u/s 154 of the Act. In my considered opinion, the order passed by the AO has been correctly passed as per terms of section 154 of the Act. There is nothing illegality about this order. The issues raised by the Appellant in the application made u/s 154 of the Act, are beyond the scope of section 154 of the Act. In this regard, it would be apt to go through the said section for better understanding;

154. Rectification of mistake.—(1) With a view to rectifying any mistake apparent from the record an income-tax authority referred to in section 116 may,—

- (a) **amend any order passed by it under the provisions of this Act;**
- (b) **amend any intimation or deemed intimation under sub-section (1) of section 143;**
- (c) **amend any intimation under sub-section (1) of section 200A**
- (d) **amend any intimation under sub-section (1) of section 206CB.**

(1A) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided....

(3) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of 11 [the assessee or the deductor] 4 [or the collector], shall not be made under this section unless the authority concerned has given notice to 11 [the assessee or the deductor] 4 [or the collector] of its intention so to do and has allowed 11 [the assessee or the deductor] 4 [or the collector] a reasonable opportunity of being heard.”

From the above provisions of section 154 of the Act, it is obvious that only the mistakes apparent from records pertaining to orders/intimation passed can be amended. The issues raised by the Appellant pertain to notice u/s 143(2) not being served in time or Appellant's case been wrongly taken up under compulsory scrutiny, are not in the nature of mistakes which are apparent from the records pertaining to the order passed u/s 143(3) of the Act. It is not apparent from the order passed u/s 143(3) in the case of the Appellant that the notice issued u/s 143(2) has not been served in time or the Appellant's case does not qualify for compulsory scrutiny as per the extant guidelines issued by the CBDT. **Therefore, in my considered opinion, the order passed by AO u/s 154 giving the finding that 'there are no mistakes apparent from records' is a correct finding.**

Further, whether the AO was required to allow a reasonable opportunity of being heard to the Appellant as mandated u/s 154(3) of the Act, in my considered opinion, the AO was not required to do so. A perusal of provisions of section 154(3) makes it very clear that prior notice to the assessee has to be given whenever there is enhancement of the assessment or the liability of the assessee is increased. In such cases, reasonable opportunity has to be provided to the assessee under the said provisions. In the case of the Appellant, the order u/s 154 does not enhance the assessment or increases the liability of the Appellant in any manner. **Therefore, the AO was not mandated under the law to allow any reasonable opportunity of being heard to the Appellant as the order passed u/s 154.**

In view of the above discussions, I uphold the order passed by AO u/s 154 of the Act. Accordingly, the grounds raised in the appeal are dismissed.”

5. From the above, it is evident that there are no mistakes apparent from the record and the AO has passed the order u/s 154 of the Act after granting a reasonable opportunity to the assessee. The contention raised by the Id. AR that the appellant's case has been wrongly taken under compulsory scrutiny and no reasonable opportunity of being heard was granted by the AO. It is noted that there are no mistakes apparent from the record as the grounds raised pertains to the order passed u/s 143(3) of the Act by the AO. The Id. counsel for the assessee if required to challenge the assessment order on the legal ground raising the selection of a case under compulsory scrutiny and that denial of reasonable opportunity, he has to file regular appeal against the assessment order passed u/s 143(3). In our view, under the mandate he could not be permitted to take such ground of appeal against the order passed u/s 154 which are neither arising out of the rectification order passed by the AO nor covered under the prima facie mistakes. Accordingly, we find no infirmity or perversity in the impugned order passed by the Id. CIT(A) to the facts on record. Thus, the grounds of appeal of the appellant are rejected.

6. In the above view, we find no merit in the contention of the Id. counsel for the appellant, and as such, the impugned order passed by the Id. CIT(A) is sustained.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 22.11.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr.PS

Copy of the order forwarded to:

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

Assistant Registrar
Jodhpur Bench