

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. 180/Ind/2023
Assessment Year: 2014-15

A.C.I.T., 4(1), Indore.	बनाम/ Vs.	Parvati Sweetners and Power Limited, 119/1, Naroli Arcade Manormaganj, Near Palasia Square, Indore.
(Appellant /Revenue)		(Respondent/Assessee)
PAN: AAGCP3350D		
Assessee by	Shri Pankaj Shah, C. A. and Shri Soumya Bumb, CA	
Revenue by	Shri Ms.Simran Bhullar, CIT DR	
Date of Hearing	31.01.2024	
Date of Pronouncement	31.01.2014	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 08.02.2023 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"], which in turn arises out of rectification-order dated 31.03.2021 passed by learned DCIT/ACIT-4(1), Indore ["AO"] u/s 154 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2014-15, the revenue has filed this appeal.

2. Heard the learned Representatives of both sides and perused the orders of lower-authorities carefully. For the relevant AY 2014-15 under

consideration, the assessee's case was selected under scrutiny and the AO issued statutory notices u/s 143(2)/142(1) from time to time which were duly complied by assessee. Ultimately, the AO passed assessment-order u/s 143(3) on 29.12.2016. Subsequently, the AO rectified the said assessment-order u/s 154 vide order dated 31.03.2021 whereby he disallowed depreciation of Rs. 6,32,96,126/-, which was allowed in scrutiny-assessment, on the premise that the assessee had not submitted any evidence of additions in fixed assets. Aggrieved, the assessee carried matter in first-appeal and argued that the impugned disallowance made by AO was not an apparent mistake; it is a debatable issue which is outside the ambit and scope of section 154. The Ld. CIT(A), after a careful consideration, accepted contention of assessee and deleted the disallowance made by AO. Now, the revenue has come in next appeal assailing the order of CIT(A).

3. At first, we extract the order of CIT(A) for an immediate reference:

"5. Decision

I have gone through the grounds of appeal, statement of facts, submissions of the Appellant, order passed u/s 154 of the Act and have considered the facts and evidences on record.

5.1. The only issue involved in the appeal is that the AO has erred in passing order u/s 154 when there was no mistake apparent from records and further, reasonable opportunity of being heard was not made available to the Appellant. In this regard, the Appellant has submitted that notice u/s 154 was issued on 19.03.2021 seeking response by 29.03.2021 for rectifying the order of assessment passed u/s 143(3) of the Act on 29/12/2016. The Appellant has submitted that all details were submitted in the course of the original assessment proceedings and thereafter, assessment was completed u/s 143(3) of the Act. The AO has subsequently issued notice u/s 154 on the grounds that the Appellant has not furnished any evidence of addition in the assets i.e. building, Plant & Machinery. The Appellant has further submitted that the mistake as pointed by the AO in the notice issued u/s 154 does not qualify the criteria of 'mistakes being apparent from records'. In this regard, the Appellant has placed reliance on a plethora of case laws including decision of Hon'ble Supreme Court in the case of **TS Balaram Vs. Volkart Brothers** holding that only mistakes apparent from records can be rectified u/s 154 of the Act. These case laws are mentioned at para 4 above.

I have considered the submissions of the Appellant and I agree with the same. It is observed from the order passed u/s 154 of the Act that the AO has travelled beyond the scope of section 154 of the Act. Disallowing depreciation on the basis of observation that evidence of additions to the fixed assets were not furnished at the time of the assessment proceedings is a debatable issue and is beyond the scope of section 154 of the Act. Further, if that was the case, the AO would have disallowed the depreciation while passing the assessment order u/s 143(3). However, that was not done. Now, assuming for a second that the AO erred in not disallowing the depreciation in the assessment order passed u/s 143(3) in absence of evidence of addition to the fixed assets, in that case, this mistake cannot be rectified by invoking provisions of section 154 of the Act as these mistakes do not qualify as 'mistakes apparent from records'.

The Hon'ble Apex Court in the case of **TS Balaram Vs. Volkart Brothers** 82 ITR 50 (SC) clearly held that a mistake apparent on the record must be an obvious and patent mistake and not something which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions cannot be said to be an error apparent on the face of the record. A decision on a debatable point of law is not a mistake apparent from the record.

Following the above decision of Hon'ble Supreme Court (supra), Hon'ble ITAT, Delhi has held in a recent decision dated 29/04/2022 in the case of **Allied Agencies Vs ITO (ITAT Delhi)** Appeal Number, ITA No.7508/Del/2018, that only mistakes apparent from records can be rectified and debatable issues are beyond the

scope of section 154. I am placing reliance on this decision as the facts of this case is similar to the facts of the Appellant. Relevant part of the decision is reproduced below;

"2. In this case the return of income was filed by the Assessee on dated 23.09.2013 by declaring the income of Rs. 3,89,390/-, which was processed and completed on dated 05.06.2015 by assessing at an income of Rs. 4,13,770/- u/s 143(3) of the Act as against the returned income of Rs. 3,89,390/-

2.1 Later on, on perusal of the details filed during the course of assessment proceeding, it was revealed by the AO that a partnership deed dated 04.04.1993 was filed along with other details on dated 01.05.2015 from where it appears that the partnership deed had not authorized any payment of interest to any partner. However, the Assessee had claimed deduction of Rs. 13,47,480/- being interest paid to the partners in its computation of income/ P&L account. Thus, it was observed by the AO that as per the provisions of section 40(b)(ii) any payment of remuneration to any partner who is a working partner or of interest to any partner which, in either case, is not authorized by, or is in accordance with, the terms of partnership deed is not deductible in computing the income chargeable under the heads "Profits or Gains of business or profession".

2.2 Though the AO issued a notice on dated 08.02.2017 fixing the case for hearing on 15.02.2017 to rectify the excess interest expenses allowed. However, the Assessee neither appeared nor filed any reply. Subsequently, on dated 27.02.2017 the Assessee in the proceedings u/s 154 of the Act except filing an adjournment application, did not file any reply and/or documents therefore, it was observed by the AO that the Assessee has nothing to say or submit or furnish which can justify the excess claim. Consequently, the AO disallowed the extra claim of interest to the tune of Rs. 13,47,480/- and added the same in the income of the Assessee while rectifying the assessment order u/s 154 of the Act.

3. The Assessee challenged the said action of the Ld. Commissioner on various counts. The Assessee in the appellate proceeding filed an application under Rule 46 of the IT Rules 1962 (in short "the Rules) along with supplementary partnership deed dated 11.09.2012 by incorporating certain clauses with a view to comply with the provisions of the Act in respect of payment of interest and salary to partners and raised the issue that though the

Assessee vide letter dated 06.03.2017 furnished with ASK on 10.03.2017 submitted a copy of the supplementary partnership deed for perusal of the AO, however, the AO without taking cognizance of the same passed an order on dated 08.03.2017 without giving proper opportunity to the Assessee.

3.1 The Ld. Commissioner could not find any reason to admit the additional evidence under Rule 46A of the IT Rules (in short the Rule) and without prejudice to the above decision u/s 46A of the Rules, decided the case on merits also and confirmed the disallowance of Rs. 13,47,800/- by holding that hearing u/s 154 of the Act was fixed by the Id. AO on dated 06.03.2017. However, on the said date no submission was furnished and therefore, the AO passed the rectification order on dated 08.03.2017. The Assessee has furnished a copy of a letter dated 06.03.2017 furnished with ASK on 10.03.2017. As the order was already passed on 08.03.2017 and therefore there was no occasion for the AO to consider the submission of the appellant furnished on 10.03.2017. Since, the appellant has not given any cogent reason for admission of additional evidence during the course of appellate proceedings under Rule 46A at this stage. Hence, the additional evidence submitted by the appellant during the course of appellate proceedings cannot be admitted.

4. Aggrieved by the impugned order, the Assessee is in appeal before us. Though the Assessee also raised the issues on merits however, emphasized that disallowance made by AO and sustained by Ld. Commissioner is a debatable issue and not an apparent mistake warranting against u/s 154 of the Act, therefore, the same is liable to be deleted, being legally unsustainable.

5. On the contrary, the revenue department though relied upon the orders of the authorities below, however could not controvert the factual position with regard to debatable issue.

6. We have given thoughtful consideration to the issue involved in the instant case. The Hon'ble Apex Court in the case of *TS Balaram Vs. Volkart Brothers* 82 ITR 50 (SC) clearly held that a mistake apparent on the record must be an obvious and patent mistake and not something which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions cannot be said to be an error apparent on the face of the record. A decision on a debatable point of law is not a mistake apparent from the record.

6.1 Coming to the instant case it is not in dispute that the AO has passed

the order u/s 154 of the Act on a debatable issue, which cannot be construed rectification of any mistake apparent from the record and by virtue of provisions of section 154 of the Act, the AO is not empowered to do so, hence respectfully following the aforesaid dictum of the Hon'ble Apex Court, we are inclined to quash the order passed by the Id. AO u/s 154 of the Act itself. Ordered accordingly. Consequently, the impugned order is set aside.

7. In the result the appeal filed by the Assessee is allowed."

Thus, considering the facts of the case, disallowance of depreciation being a debatable issue is not covered u/s 154 of the Act. Accordingly, respectfully following the above decisions and considering facts of the case, I direct the AO to delete the addition of Rs. 6,32,96,126/-made u/s 154 of the Act. **Grounds are, thus, allowed.**

6. **In the result, the Appeal is allowed.**

सत्य प्रतिलिपि

बहालक नासकर आयुक्त
4 (1) इन्दौर

Commissioner of Income-tax (Appeals)
Income Tax Department

4. Thus, the CIT(A) has held that the issue of depreciation taken up by AO for rectification was a debatable issue and hence outside the scope of section 154. Learned DR appearing for appellant/revenue has understood this legal point quickly and could not point out any mistake in the order of CIT(A). In that view of matter, we hardly find any mistake in the order of CIT(A) so as to warrant our interference. The same is therefore upheld and the revenue's appeal is dismissed being devoid of any merit.

5. Resultantly, this appeal is dismissed.

Order pronounced in open court immediately on conclusion of hearing and subsequently reduced in writing on the same day

sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 31.01.2024

CPU/Sr. PS

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

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore