

**IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI**  
**BEFORE SHRI ABY T. VARKEY, JM AND SHRI S RIFAUR RAHMAN, AM**

आयकर अपील सं /I.T.A. No. 2950/Mum/2023  
(निर्धारण वर्ष / Assessment Year: 2018-19)

Uttam Narayanmal Mehta S K Metal, Shop No 10, Ground Floor, 380/388, Majestic Mansion, SVP Road Near Harikishandas Hospital, Opp. Central Bank of India, Girgaon. Mumbai-400004.	<b>बनाम /</b> Vs.	ITO- Ward 19 (3) Piramal Chamber, Dr. S.S. Rao Marg, Lalbaug, Parel, Mumbai-400012.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGPM7908K</b>		
(अपीलार्थी/ <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Assessee by:	None
Revenue by:	Shri C T Mathews (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 16/01/2024  
घोषणा की तारीख /Date of Pronouncement: 30/01/2024

**आदेश / ORDER**

**PER ABY T VARKEY, J.M:**

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeal) /National Faceless Appeal Centre, Delhi (NFAC) [hereinafter referred as the "Ld. CIT(A)"] dated 08.06.2023 for Assessment Year 2018-19.

2. The grounds of the appeal raised by the assessee are as under:

"1. The learned Commissioner of Income Tax Appeals (National Faceless Appeal Centre), Delhi erred in confirming the order under section 154 passed by the Income Tax Officer - Ward 19(3)(1), Mumbai (Assessing Officer) that the mistake of considering the profit of proprietary concern of the appellant twice at the time of computing the total income of the appellant is not a mistake apparent from record and therefore cannot be rectified under section 154 of the Act.

Your Appellant submits that the aforementioned mistake is a mistake apparent from record and the same ought to be rectified under section 154 of the Act.

2. The learned Assessing Officer erred in not allowing the appellant to change the head for deduction claimed in respect of profit from proprietary concern amounting to Rs. 32,28,110 from, "Income/receipts credited to profit and loss account considered under other heads of income/chargeable u/s 115BBF/ chargeable u/s 115BBG Other sources at Sr. No. 3(d) of Schedule BP to "Any other amount allowable as deduction at Sr. No. 32 of Schedule BP.

Your Appellant submits that the Assessing Officer ought to have allowed the appellant to change the head of deduction under section 154 of the Act.”

**3.** The brief facts as taken note by the Ld. CIT(A) [*after perusal of the form No. 35*] is that the Appellant had filed his return of income for A.Y 2018-19 declaring income of Rs 30,53,550/-. The return of income was processed by CPC on 1st October 2019 by u/s 143(1) of the Income Tax Act, 1961 (hereinafter “the Act”) and the income got enhanced to Rs 62,78,450/- by making adjustments to the *business income* of the appellant. Aggreived, the appellant filed a rectification application before CPC u/s 154 on 22nd March 2022 which was rejected because the rectification powers of the ITR for A.Y 2018-19 were transferred to the AO. Thereafter, the appellant had filed another rectification application before the AO on 11th October 2022 and submitted his explanation with support of documentary evidences claiming rectification of a *bonafide* mistake committed by the tax consultant while filling up the ITR which will be discussed (*infra*) and asserted that it was a mistake apparent from record. However, the aforesaid rectification application filed with the AO was rejected by AO by stating that the mistake is not

apparent from record. Aggrieved the assessee preferred an appeal before the Ld. CIT(A), who was pleased to dismiss the same by holding as under:

“4.3 Perusal of facts submitted by the appellant shows that the appellant was filed his return of Income on 23.10.2018 and declaring total income of Rs.30,53,550/-. The same was processed by CPC u/s 143(1) of the Income Tax Act, 1961 with the addition of Rs.32,24,903/- in the hand of the appellant under the head of PGBP. Subsequently the appellant had filed a rectification u/s 154 to CPC on 22nd March 2022 and the said application for rectification was rejected by CPC as the rectification rights of the ITR for AY 2018-19 were transferred to the AO. Thereafter, the appellant had filed another rectification application before the Ld. AO on 11th October 2022 and submitted explanation with documentary evidences for rectification of a bonafide mistake apparent from record. The aforesaid rectification application filed with the Ld AO was rejected by the Ld AO by stating that the mistake is not apparent from record.

4.4 During the appellate proceedings, the appellant has submitted that while filing the ITR, his tax consultant had filed an amount of Rs. 64,39,728/- being net profit from profit and loss account for the year in (Schedule BP), which was absolutely erroneous as the net profit from P&L account for the year ended on 31.03.2018 was Rs.32,18,247/. The amount of Rs.64,39,728/- actually included Rs. 32,18,247/- being profit from Proprietary concern which has been erroneously shown in Part A-P and L-Profit and Loss account for the FY 2017-18. Therefore, the net profit for the year which should have been states as Rs 32,18,247/- was erroneously stated as Rs.64,39,728/- . This being a bonafide error and is apparent from records as the profit for the FY as TAR filed in form 3CD-3CD is Rs.32,18,247/-

4.5 As per the P&L account shows that the appellant was declared total profit of Rs. 64,39,728/- which was also added in proprietor's

capital account of the Balance Sheet filed with ITR. Hence, at the time of processing of his ITR the CPC has been added as per profit declared in profit & loss account in his return of income filed by the appellant u/s 143(1) of the Income Tax Act, 1961. The CPC is correct and the said mistake is not 'mistake' apparent from ITR filed by the appellant.”

**4.** Aggrieved by the aforesaid action of the Ld. CIT(A) the assessee is before us.

**5.** We have perused the record and heard the Ld. DR. We note that the main grievance of the assessee is against action of the Ld. CIT(A) confirming the order passed by the AO passed u/s 154 of the Act. According to the assessee, he is a proprietor of proprietary concern named as M/s S K Metals. According to him, he has filed his return of income declaring income of Rs. 30,53,550/-. However, while processing the return u/s 143(1) of the Act, the CPC has enhanced his income to Rs. 62,78,450 in place of Rs. 30,53,550 and thus made an addition of Rs. 32,24,903/- under the head “PGBP” (*Business income*). This adjustment made by CPC in the business income of the assessee prompted him to file rectification application u/s 154 of the Act which was rejected by the CPC, because the rectification power of the ITR for AY 2018-19 was transferred to the jurisdictional AO [ITO Ward 19(3)(1)]. Therefore, assessee filed another rectification application before the AO on 11.10.2022 and pointed out that there was a bonafide mistake while filling up the return of income and explained the mistake with support of the documentary evidences and pleaded for rectification of the mistake which according to the assessee was apparent from the record. According to the assessee while filling up ITR form, the assessee’s tax consultant had filed an amount of Rs. 64,39,728/- as *net-profit* from profit & loss account for the year (*schedule BP*) which according to the assessee was *per-se* erroneous, whereas the

correct *net-profit* from P&L account as on 31.03.2018 was Rs. 34,18,247/-. According to the assessee the erroneous figure of Rs 64,39,728/- was part of the net-profit of Rs. 32,18,247/- which has been erroneously shown in part A-P & L (Profit and loss account for the FY 2018-19). Thus, it was explained by the assessee that the net-profit for the year ought to have been Rs. 32,18,247/- which was erroneously filled up as Rs. 64,39,728/- and drew the attention of the AO to the profit as disclosed in the Tax Audit Report (TAR) filed in form 3CD at Rs. 32,18,247/-. However, the AO observed that as per the profit and loss account of the return, the assessee had declared total profit of Rs. 64,39,728/- which was also added in the proprietary capital account of the balance-sheet filed with the return of income. Therefore, according to the AO, the CPC while processing the return had made addition as per profit declared in P&L account and calculated the tax liabilities. According to the AO, the plea of the assessee that profit of the proprietary concern was calculated twice in the P&L account at the time of the filing of return of income cannot be treated as mistake apparent from records. Hence, he rejected the rectification application filed by the assessee. On appeal, the Ld. CIT(A) observed that as per the P&L account, the assessee had declared total profit of Rs. 64,39,728/- which was also added in proprietor's capital account of the balance-sheet with the ITR. Therefore, according to the Ld. CIT(A), the AO had rightly held the mistake as not apparent from the ITR filed by the assessee. Further, the Ld. CIT(A) was of the opinion that the right course for redressal of grievance would be to file revised return, and therefore he upheld the action of the AO.

**6.** The aforesaid facts as noted by the Ld. CIT(A)/AO are not repeated for the sake of brevity. The main grievance of the assessee is that his net-profit from business was Rs. 32,18,247/- and not Rs. 64,39,728/- which was erroneously filled up by the tax consultant in the schedule BP of ITR. The assessee pointed out to

AO/Ld. CIT(A) that the amount reflected as Rs. 64,29,728/- actually included Rs. 32,18,247/- being profit from proprietary concern which has been erroneously shown in part A-P&L Account (*Profit and loss account for the FY 2017-18*). Therefore, according to the assessee, net-profit for the year ought to have been Rs. 32,18,247/- which was erroneously stated as Rs. 64,39,728/- in schedule BP; and in order to demonstrate that his aforesaid claim is bonafide, he drew the attention of AO/CIT(A) the profit as disclosed as per TAR filed in form 3CD which according to the assessee is reflecting Rs. 32,18,247/-, which fact corroborates his claim. In such a scenario, according to us, the AO ought to have examined the plea of the assessee in the light of the TAR/Form 3CD and ought to have verified the facts as to whether the profit of the proprietary concern was calculated twice in the P&L account while filling up the ITR. In this context, it would be apt to borne-in-mind that authorities under the Income Tax Act has to act in accordance with law and collect tax only as provided under the Act. Article 265 of the Constitution of India permits collection of tax only by authority of law. If an assessee under a mistake, misconception or on not being properly instructed, is over-assessed, the authorities under the Act are required to assess and ensure that only legitimate tax due are collected. The Hon'ble Supreme Court has held that procedure is hand maiden to justice and technicalities should not come in the way of substantive justice. According to us, the AO ought to have examined the plea of the assessee as noted (supra), which he has not done. Be that as it may, in the light of the discussion (supra), we set aside the impugned order of Ld. CIT(A) and restore the issue raised by the assessee (supra), back to the file of Jurisdictional AO to examine/verify the plea/facts stated (supra) and the assessee is directed to file relevant documents to prove his contention and the AO to verify the plea of the assessee in the light of the submission/facts stated (supra), and after hearing the assessee to pass order in accordance to law.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 30/01/2024.

Sd/-

(S RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 30/01/2024

Aniket Singh Rajput, (Steno)

Sd/-

(ABY T VARKEY)  
JUDICIAL MEMBER

**Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**