

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “SMC”, HYDERABAD**

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.336/Hyd/2024		
Assessment Year: 2015-16		
Madhusudhan Reddy Aitha, 13-65, Main Road, Garepalli, Kataram, Hyderabad – 505503. Telangana. PAN : AGMPA9695H.	Vs.	The Income Tax Officer, Ward – 2, Karimnagar.
(Appellant)		(Respondent)
Assessee by:		Ms. S. Sandhya, Advocate.
Revenue by:		Shri Ashish Kumar Shukla, Sr.AR
Date of hearing:		30.04.2024
Date of pronouncement:		30.04.2024

ORDER

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2015-16 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.22.05.2023 invoking proceedings under section 154 of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee read as under :

“ 1 The order of the learned CIT (A) is erroneous both on facts and in law.

2) The learned CIT (A) erred in deciding the appeal ex-parte without providing proper opportunity to the appellant;

3) The learned CIT (A) ought to have sent the notices physically for appearance;

4) The learned CIT (A) erred in confirming the action of the Assessing Officer in rectifying the assessment passed u/s 143(3) for increasing the rate of profit;

5) The learned CIT (A) ought to have seen that the Assessing Officer is not entitled to rectify the percentage of profit as a mistake apparent from record

6) The learned CIT (A) ought to have seen that there is no mistake which can be rectified u/s 154 of the I.T.Act.

7) The learned CIT (A) erred in confirming the action of the Assessing Officer in estimating the income at 8% of Rs.47,13,277/- without considering the fact that the said amount represents the sales effected by third parties and the assessee is entitled only for the commission which was rightly decided by the Assessing Officer at the time of completion of the assessment u/s 143(3) of the I.T.Act. “

3. The appeal filed by the assessee is barred by limitation by 257 days. Assessee has moved a condonation petition explaining reasons thereof. I have heard both the parties on this preliminary issue. Having regard to the reasons given in the petition, I condone the delay and admit the appeal for hearing.

4. The brief facts of the case are that assessee is an individual deriving income from Business as commission from trading of Jaggery. The assessee has prepared the Profit and Loss account and arrived at a profit of Rs.2,95,643/- for A.Y. 2015-16 and the same was admitted as the gross total income in the return of income filed on 23.6.2016. While filing the return of income, the assessee inadvertently omitted to admit the commission income from jaggery business. The Assessing Officer found that the turnover admitted in the Profit and loss account was much lesser when compared with the gross receipts as per the bank statement. Thereafter, the Assessing Officer completed the assessment u/s 143(3) accepting the contention of the assessee that the commission on jaggery business is 2% on the turnover of Rs.47,13,227/- and thereby determined the income at Rs.3,80,225/-. Thereafter, Assessing Officer after having a doubt about the commission income, issued a notice u/s 154 of the Act. According to the Assessing officer the turnover of Rs.47,13,227/- was to be termed as sales and the estimation of income was required to be made at 8%. Hence, the Assessing Officer added further amount of Rs.3,77,058/- and accordingly, passed order u/s 154 of the Act dt.18.09.2019.

5. Feeling aggrieved with the order of Assessing Officer passed u/s 154 of the Act, assessee filed an appeal before the Id.CIT(A), NFAC, Delhi, who dismissed the appeal of assessee.

6. Before me, the ld. AR for the assessee has submitted that if given a chance, the assessee would be able to explain the order passed u/s 154 of the Act thereby modifying the assessment order passed under section 143(3) of the Act whereby the Assessing Officer had wrongly computed the commission at 8% instead of 2% was erroneous. It was also the contention of the ld. AR that the assessee has been regularly showing commission income at 2% in all the previous and subsequent assessment years.

7. Per contra, the ld. DR has submitted that no material has been furnished before the ld.CIT(A) or the Assessing Officer justifying the computation of income at 2% and hence, the present appeal of the assessee is required to be dismissed. Further, the ld. DR has drawn my attention to paras 5.1 to 5.3 of the order of ld.CIT(A) wherein it was held as under :

“5.1 During the faceless appellate proceedings, several notices were issued to the appellant via email. However, the appellant has not submitted any response, despite repeated notices giving opportunity to the taxpayer to submit response. No reply was furnished, the appellant has not responded to any of the notices served on him. Therefore, the appeal is being decided based on information available on record.

5.2 I have perused all the material available. The fact on record is that rectification proceedings were initiated based on the objection raised by the Internal Audit Party that ‘AO has accepted the assessee’s business as Commission from trading of jaggery without any documentary evidence of commission business, the net profit should be determined @ 8% instead of 2%, resulted in short computation of income’. The Assessing Officer thereafter calculated the income at 8%, i.e. at Rs. 7,57,283/- as against originally assessed income of Rs.3,80,225/- (at 2%) u/s 143(3) of the IT Act.

5.3. *During appellate proceedings there has been no response by the appellant. Section 154 of the IT Act comes into play when there is a “mistake apparent from record”. As is clear that the issues of determination of source of income i.e. either Business income or Commission income, without examining any evidence, is a mistake apparent on the record. Accordingly, the action of the AO in treating the commission received as business income and determining the net profit at 8% is as per law, and needs no interference. Despite several opportunities during appellate proceedings, the appellant did not give any evidence to support his claim. In these facts and circumstances, I am in agreement with the action of the Assessing Officer and hold that the appellant is unable to substantiate any of his grounds and is not able to controvert the rectification order.”*

8. I have heard the rival submissions and perused the material on record. In the present case, the Id.CIT(A) has noted in para 5.1 of his order that no reply has been furnished by the assessee and that the assessee not even responded to the notice served upon him. Since the assessee has willingness to produce all the records, therefore, in my opinion, it would be appropriate if the matter is remanded back to the file of Id.CIT(A). Further, I am also of the opinion that order passed section 154 order by the Assessing Officer and confirmed by the Id.CIT(A) had limited scope only i.e., to correct the mistake/s which is/are apparent from record passed by the Assessing Officer. The Perusal of 5.2 of the order of Id.CIT(A) clearly shows that the rectification order was passed by the Assessing Officer on the basis of internal audit party report whereby the audit party was of the opinion that instead of 2%, 8% commission rate should have been applied. Prima facie, the above said basis for rectifying the order passed by the Assessing Officer is not permissible in law. However, considering the rival contentions and willingness of the

assessee to produce all the records, the assessee may be given one chance to explain the case before the ld.CIT(A). Hence, the matter is remanded back to the file of ld.CIT(A) with the following directions :

1. The ld.CIT(A) should examine whether the Assessing Officer can rectify the assessment order dt.12.12.2017 on the objections raised by the internal audit party or not thereby increasing the commission rate @ 8%.
2. The ld.CIT(A) shall decide the issue in accordance with law and thereafter pass a detailed speaking order dealing with the contentions of the assessee.
3. Needless to say, I have not adjudicated any other ground, all the grounds are required to be adjudicated by the ld.CIT(A) in the remand proceedings.
4. The observations made by the undersigned in the order are not expressions on the merits of the case. The ld.CIT(A) shall decide the issue remanded back without being influenced by the observations of the undersigned in the body of the order. Accordingly, the appeal of the assessee is allowed for statistical purposes.

9. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 30th April, 2024.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 30th April, 2024.

TYNM/sps

Copy to:

S.No	Addresses
1	Madhusudhan Reddy Aitha, 13-65, Main Road, Garepalli, Kataram, Hyderabad – 505503.
2	The Income Tax Officer, Ward – 2, Karimnagar.
3	Prl.CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order