

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 07/JP/2024
निर्धारण वर्ष/Assessment Year : 2011-12

Prem Chand Agrawal, F-75 Prop. M/s Kailash Industries, RIICO Industrial Area Newai Tonk	बनाम Vs.	Income Tax Officer, Tonk
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AHCPA 4339 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Dinesh Kumar, Adv.
राजस्व की ओर से / Revenue by : Sh. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 03/04/2024
उदघोषणा की तारीख / Date of Pronouncement: 30/05/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

This appeal is filed by the assessee aggrieved from the order of the Addl./Jt Commissioner of Income Tax, Appeal-3, Mumbai [Here in after referred as (CIT(A)] for the assessment year 2011-12 dated 08/11/2023, which in turn arises from the order passed by the AO passed under Section 143(1)/154 of the Income tax Act, 1961 (in short 'the Act') dated 22.04.2014.

2. The assessee assailed the present appeal on the following grounds;

"1. Whether in the facts and circumstances of the case, the Learned CIT (Appeals) is justified in confirming the order of Learned Assessing Officer in rejecting the rectification application?

2. Whether in the facts and circumstances of the case, the Learned CIT (Appeals) is justified in confirming addition of Rs. 11,65,000/- on account of interest from firm in which assessee is partner ignoring that interest received from firm is only Rs. 1,29,100/-and not Rs. 12,94,100/-?

3. Whether in the facts and circumstances of the case, even if return filed by the Appellant is under the provisions of Section 139(4) of the Act, then also Section 154 of the Act permits rectification of mistake apparent on the face of the record as the amount was wrongly punched as apparent from the statutory audit report ?

4. Whether when there is a mistake apparent on the face of the intimation under Section 143(1) of the Act, if not permitted to be rectified shall be against the principle of Article 265 of the Constitution of India where no tax can be retained without authority of law?

5. Whether in the facts and circumstances of the case, the learned CIT(Appeals) is justified in not appreciating that it is a case of filing of corrected return rather a case of revised return?

6. That the appellant craves leave to add, amend or alter all or any of grounds of appeal and relief claimed before or at the time of hearing."

3. The fact as culled out from the records is that the assessee is a Partner of M/s. Mahaveer Oil Industries, Niwai District Tonk. Assessee received interest of Rs. 1,29,100/- and remuneration of Rs. 84,000/- totaling to Rs. 2,13,100/- from the Partnership Firm

M/s. Mahaveer Oil Industries. Income Tax Return of Partnership firm along with audited accounts were submitted. Assessee e-filed its return for the Assessment Year 2011-12 declaring total income of Rs. 14,09,550/- on 10/02/2012 having acknowledgement No. 339020280100212. In the return of income filed by mistake in punching, interest income was punched as Rs. 12,94,100/- in place of Rs.1,29,100/- Thus, income was computed at 14,09,550/- as shown in return. The signed hard copy of the acknowledgement was not sent and immediately on having knowledge of the mistake on 7/3/2012 corrected his return and declared his correct total income at Rs. 2,44,550/- having acknowledgement No. 348435310070312. Hard Copy of both the returns original & corrected were sent to CPC simultaneously in the same envelop. Copy of both the returns are submitted and placed on record. The Centralized Processing Center, Income Tax Department passed its Order on 11/06/2012 under Section 143(1) on the basis of original return filed on 10/02/2012 without considering the fact that the Original Return has already been corrected on 7/3/2012. Assessee then filed rectification application before CPC, Income Tax Department who vide its communication dated 15/11/2012

informed that the case has been transferred to the Jurisdictional Assessing Officer and further proceedings shall be taken by the Jurisdictional Assessing Officer. Assessee then filed an application dated 24.10.2013 before Income Tax Officer, Tonk under Section 154 of the Act for rectification of mistake in order dated 11.6.2012. Income Tax Officer, Tonk rejected the rectification application vide its order dated 22/4/2014.

4. Aggrieved from the said action of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A)/NFAC. Apropos to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:-

“Decision

“Assessee submission has been considered carefully. In this case for AY 2011-12 due date for filing return u/s 139(1) was 31 July 2011, whereas assessee has filed return on 10.02.2012 of Rs. 1409550/-. Furthermore, assessee has also sent ITR V of return filed on 10.02.2012 to CPC for verification, which CPC has correctly processed as held clearly by the Hon'ble Supreme Court of India in the case of Goetze (India) Ltd. V. Commissioner of Income Tax that assessee cannot amend return filed by him for claiming deduction or other than by filing a revised return.

In this case Assessee has not filed any revised return for the relief, he is claiming. Accordingly, assessess's case has been dismissed and no relief can be given. It is not a mistake apparent from record.”

5. As the assessee did not find any favor from the order of the Id. CIT(A), the assessee preferred the present appeal on the ground as reproduced hereinabove. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S. No.	Particulars	Page No.
1	Copy of ITR-V (Original) Dt 10.2.2012 Along with computation of income	1-2
2	Copy of ITR-V (Revised) Dt 7.3.2012	3
3	Copy of Intimation u/s 143	4-6
4	Copy of Application Dt. 24.10.2013 along with audit report	7-22
5	Copy of written submissions before CIT (Appeals) along with e-proceedings acknowledgment	23-30

Decisions:

- ITO, Mumbai vs. Vikunj Enterprises Private, Mumbai in ITA No. 1789/Mum/2018 dated 30/04/2019
- Goetze (India) Ltd. vs. CIT (2006) 204CTR (SC) 182
- M/s Craftsman Automation P. Ltd. vs. CIT on 30 September, 2015 in Tax Case Appeal No. 1177 of 2005
- Chandrashekhar Bahirwani, Mumbai vs. ACIT in ITA No. 7810/Mum/2010 & 6599/Mum/2012 dated 17.06.2015
- Yogita Dhiren Goradia, Mumbai vs. CIT(A), NFAC, Delhi on 31 January, 2023

- Madhabi Nag, Bankura vs. ACIT in ITA No. 512/Kol/2015 dated 09.12.2015
- Shrikant Real Estates (P) Ltd. vs. ITO in ITA No. 4304/Mum/2012 dated 19th October, 2012
- Sumanchandra G. Mehta vs. ITO in ITA Nos. 564/Mum/2012 & 565/Mum/2012 dated 24th Jan, 2013

6. The Id. AR of the assessee in addition to the above written submission, the Id. AR appearing on behalf of the assessee submitted that the tax should be charged correctly in the hands of the assessee. The Id. JAO has not made any inquiry as to the factual error available on record and therefore, the assessee should be charged on the correct income and accordingly, the tax is required to be levied. To support his contention he has relied upon the various case laws as cited here in above.

7. The Id DR representing the revenue submitted that the correct action should be followed by the assessee by filing the revised return which the assessee has not filed. The case laws cited all are related to the fact that the assessee filed the revised return and in this case the assessee has already filed the return after the due date there are not provisions to revise that return. Thus, there is no merit in the arguments of the Id. AR of the assessee. Based on

these arguments the Id. DR relied upon the finding recorded in the orders of the lower authority.

8. We have heard the rival contentions and perused the material placed on record. The apple of discord in this case is that whether the assessee has received interest from the partnership firm at Rs.1,29,100/- or Rs. 12,94,100/-. This appears to be mistake apparent from the record and therefore, the application filed by the assessee u/s 154 of the Act is required to be adjudicated on merit and therefore, considering that aspect of the matter, we set aside the matter with a direction to the Id. AO to make necessary inquiry and obtained evidence from the assessee and considered the plea of the assessee on merits and charged the tax in accordance with law based on the correct income. We get strength to support of our wherein on the similar circumstances the co ordinate bench of Mumbai has considered the plea of the assessee. Out of the judgment so relied upon by the Id. AR of the assessee we find that on the similar circumstances as that of the assessee was in the case of Shri Sumanchandra G. Mehta Vs. ITO in ITA no. 564/Mum/2012 wherein the co-ordinate bench observed that;

“7. The present case is a perfect example of such ignorance. The assessee has shown interest income earned as well as interest paid under the head "income from other sources". Not realizing that a negative figure is not accepted by the server and therefore the interest paid shown as Rs. 2,33,535/- was rejected by the server while processing the return.

8. No doubt the CBDT has the powers to frame the rules but, at the same time, it cannot benefit from the ignorance of the taxpayers using the latest technology. We do not find any reason why such error should not be rectified by the AO. This is not ignorance of law but ignorance of the usage of the latest technology.

9. Therefore in the interest of justice and fair play to the taxpayer, we restore this issue back to the files of AO. The AO is directed to examine the claim of the assessee of interest paid at Rs. 2,33,535/- and if satisfied with the claim, the AO is directed to deduct the same from the positive interest figure of Rs. 3,38,345/- meaning thereby that only Rs. 1,04,810/- should be added to the taxable income.

10. Before parting, a similar issue came up for hearing before the Tribunal in the case of Srikant Real Estate Pvt. Ltd. 140 ITD 155 wherein one of us (AM) is the author of the decision where also the Tribunal has taken a similar view and directed the AO to rectify the error. Drawing support from the findings given in the aforesaid case, this appeal is also restored back to the files of the AO with the above direction.

11. In the result, the appeal filed by the assessee is allowed for statistical purposes.”

Respectfully following the findings as referred above we direct the Id. AO to decide the application of the assessee filed u/s. 154 of the Act after making necessary relief and decide the issue of charging the correct income in the hands of the assessee. In terms of these

observations, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 30/05/2024.

Sd/-

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

(राठौड कमलेश जयंतभाई)

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 30/05/2024

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Prem Chand Agrawal, Tonk
2. प्रत्यर्थी / The Respondent- ITO, Tonk
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA Nos. 07/JP/2024}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar