

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA RAGHUNATH KAMBLE, JUDICAL MEMBER
&
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 814/Ahd/2023
(निर्धारण वर्ष / Assessment Year : 2011-12)

Patel Inn And Travels Private Limited 59, Op. Rural Police Head Quarters, B/h. S. G. Highway, Makarba Road, Ahmedabad, Gujarat, 380054	बनाम/ Vs.	The Jt.CIT(OSD) Circle-3(1)(1), Ahmedabad Now The ITO, Ward- 3(1)(1), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCP9068M		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Ms. Urvashi Shodhan, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri J L Bhatia, Sr. DR
Date of Hearing	25/07/2024
Date of Pronouncement	29/07/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’) dated 22.08.2023 for the Assessment Year 2011-12.

2. The brief facts of the case are that the original return of income for A.Y. 2011-12 was filed by the assessee on 30.09.2011 declaring total income of Rs.81,08,580/-. Subsequently, the assessee had filed a revised return on 17.02.2012 declaring total income of Rs.68,93,150/-. The assessment was

completed under Section 143(3) of the Act on 05.03.2014 at total income of Rs.68,93,150/- as per revised return. Thereafter, the AO passed an order under Section 154 of the Act on 19.03.2018 and the income was revised to Rs.1,06,55,305/-. In the rectification order, the unabsorbed brought forward depreciation of Rs.37,62,155/- for the A.Y. 2009-10 was disallowed for the reason that it was wrongly claimed.

3. Aggrieved with the rectification order of the AO, the assessee had filed an appeal before the First Appellate Authority, which has been decided vide the impugned order and the appeal of the assessee was dismissed.

4. Now, the assessee is in appeal before us.

5. The assessee has raised the following grounds in this appeal:

“(1) *The La CITIA), NTAC has erred in law and on facts in dismissing the appeal of the assessee in as much as there is no mistake apparent on record warranting rectification of order passed u/s 143(3)*

(2) *The LD. CITIA), NEAC has erred in law and on facts in dismissing the appeal of the assessee in as much as the order u/s 154 passed by Id. it Commissioner of Income Tax (OSD), CIR 3(1)(1), Ahmedabad is time barred under sub-section (7) of section 154*

(3) *The Ld. CIT(A), NFAC has erred in law and on facts in dismissing the appeal of the assessee overlooking the facts that,*

(a) *Ld. Jt CIT (OSD), CIR 3(1)(1), Ahmedabad has passed the order u/s 154 purported to be made on 19/03/2018 but dispatched the same on. 15/06/2018 as evident from the date of booking as per electronic tracking record of India Post (Ministry of Communication Government of India) and subsequent stamping of date by EMS speed post.*

(b) *Ld. Jt CIT (OSD), CIR 3(1)(1), Ahmedabad issued demand notice u/s 156 without any serial number for Demand & Collection (D.C.No) since serial number can not be backdated as on*

19/03/2018 which confirms that, both order u/s 154 and demand notice u/s 156 were issued on 01/06/2018 the date reflected in outstanding demand summary of CPC.

- (c) *Ld. Jt CIT (OSD), CIR 3(1)(1), Ahmedabad has uploaded the demand order dated 01/06/2018 with DIN 2018201110000258595C vide communication reference no. CPC/1112/G16/14593276 as per demand summary table showing outstanding demand status on CPC Portal as on 02-06-2018.*
- (4) *The Ld. CIT(A), NFAC has erred in law and on facts in dismissing the appeal of the assessee in as much as the order u/s. 154 is passed in violation of provisions of Section 154(3) ie without giving the Appellant the opportunity of being heard.*
- (5) *The Ld. CIT(A), NFAC has erred in law and on facts in dismissing the appeal of the assessee in as much as even on the merits there is no mistake in the order passed u/s 143(3) and the claim of unabsorbed brought forward depreciation by the appellant was correct.”*


6. Ms. Urvashi Shodhan, the Ld. AR appearing for the assessee submitted that the order under Section 154 of the Act passed by the AO was not only against the principle of natural justice but it was also barred by limitation. She explained that no opportunity was allowed to the assessee before passing the rectification order. The notice under Section 154 of the Act dated 01.12.2015 as mentioned in the rectification order was never served on the assessee. According to the Ld. AR, the provision of Section 154(3) of the Act makes it mandatory to give an opportunity to the assessee and without any such notice no order can be passed. On the issue of limitation, she submitted that though the order under Section 154 of the Act was dated 19.03.2018, as per ITD data the date of this order was 01.06.2018. She further submitted that the order under Section 154 of the Act passed by the AO was served on the assessee by speed post on 18.06.2018, which confirms the contention of the assessee that the order was passed

actually on 01.06.2018 as appearing in ITD data base and not on 19.03.2018. Therefore, the order was also barred by limitation as it was passed beyond the permissible time limit of four years.

7. Shri J L Bhatia, the Ld. Sr. DR, on the other hand, supported the orders of lower authorities.

8. We have carefully considered the rival submissions and the facts of the case. In order to verify the contention of the assessee regarding violation of principle of natural justice as well as the limitation matter, a direction was given to the Revenue in the course of hearing on 28.02.2024 to produce the case records. The case record for A.Y.2011-12 (with page numbered 1 to 183 and order sheet page 1 to 2) was produced for our perusal on 25.07.2024. It is found therefrom that the order under Section 19.03.2018 as well as the demand notice is available on record. It is mentioned in the said order that a notice under Section 154/155 of the Act was issued on 01.12.2015, which was duly served on the assessee. Further that, no reply was filed by the assessee in response to the said notice. However, **no copy of the notice under Section 154 of the Act dated 01.12.2015 is available on record, neither there is any evidence for service of this notice on the assessee available in the file.** The assessee had categorically denied the receipt of any notice under Section 154 dated 01.12.2015. Since, no such notice dated 01.12.2015 nor any acknowledgement for service of this notice is found available on the case records, the contention of the assessee is found to be correct.

9. We, however, find that there is a notice under Section 154/155 of the Act dated 01.03.2018 available on record, which is reproduced below:

 सत्यमेव जयते	Office of the DY. COMMISSIONER OF INCOME-TAX -CIRCLE - 3(1)(1), Room No. B-409, 4th Floor, Pratyaksh Kar Bhavan Nr. Panjara Pole, Ambawadi, Ahmedabad -380 015. Phone: 079-2630 4893 email:Ahmedabad.dcit3.1.1@incometax.gov.in
No.DCIT.3(1)(1)/154/SCN/PI&TPL/17-18	Date:01.03.2018

To:
M/s Patel Inn & Travels Pvt. Ltd.
8, Shroff Chamber, Opp.
Navchetan Schhool, Paldi,
Ahmedabad-380006.

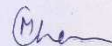
Sub: Notice u/s 154/155 of the IT Act, 1961.
.....

Please refer to the above.

2. In your case, a notice u/s 154/155 of the IT Act for A.Y. 2011-12 dated 01/12/2015 was served upon you but no response has been received till date. You are once again requested to appear in person or through an authorized representative in this office within **05 days** from the receipt of this notice.

3. Please note that if nothing is heard from your side within stipulated time, order u/s 154 will be passed without any further intimation.

Yours faithfully,


(MANOJ CHAUHAN)
Jt. Commissioner of Income Tax(OSD),
Circle-3(1)(1), Ahmedabad

The above notice refers to the earlier notice dated 01.12.2015 which is not available on record. On the other hand, **the notice**

dated 01.03.2018, which is available on record, is nowhere mentioned in the order under Section 154 of the Act dated 19.03.2018. Further, there is no evidence of service of notice dated 01.03.2018 available in the file. It is ironical that the notice that is mentioned in the order is not available in the file while the notice that is available on record is not mentioned in the order. In the order sheet of the file also, we do not find any noting in respect of the proceeding under Section 154 of the Act at all. No mention of any of the notices, nor any note regarding passing of order under Section 154 of the Act is appearing in the order sheet. It is, thus, evident from the above facts that no opportunity was provided to the assessee before passing the order under Section 154 of the Act. The provision of Section 154(3) of the Act stipulates that if an amendment has effect of enhancing an assessment or increasing the liability of the assessee, no order can be passed without allowing an opportunity to the assessee. Since, we do not find any evidence of allowing any opportunity to the assessee before passing order under Section 154 of the Act, the order is found to be in contravention to the provisions of the Act and against the principle of natural justice.

10. The order under Section 154 of the Act allegedly passed on 19.03.2018 was uploaded in the ITD data base and the date of order as appearing in ITD is 01.06.2018. It is also found from the demand notice for the order under Section 154 of the Act dated 19.03.2018 as available on record that the same was dispatched to the assessee vide Speed Post No. EG965337732IN. The assessee has brought on record a copy of the envelope

bearing the same speed post registration number, from which it is evident that this communication was sent on 16.06.2018 and received by the assessee on 18.06.2018. The Revenue was required to explain this inordinate time gap in the service of order under Section 154 of the Act, but no convincing explanation has been brought on record. It is found from the case record that the order under Section 143(3) of the Act dated 05.06.2014 was served on the assessee on 06.03.2014, the evidence for which is available on record. When the earlier order was served so promptly on the assessee, the Revenue has failed to explain as to why the order under Section 154 of the Act dated 19.03.2018 was served on the assessee after such a long gap of 3 months. In view of these facts as well as the date of order as appearing in ITD data base, we are of the considered opinion that the order under Section 154 of the Act was not actually passed on 19.03.2018 as we do not find any evidence of passing of this order on the case records. Therefore, we find considerable force in the contention of the assessee that the order was barred by limitation as it was not passed within the permissible time limit of four years.

11. After taking into account the holistic view of all the facts as discussed above, we are of the considered opinion that the findings of the Ld. CIT(A) to uphold the order under Section 154 of the Act dated 19.03.2018 cannot be held as correct. The AO's order was passed in violation of principle of natural justice and in contravention to the provisions of section 154(3) of the Act and was also not passed on the date as appearing in the order. The date of order 01.06.2018 as appearing in ITD database

unequivocally establishes that the order was barred by limitation. Therefore, the order under Section 154 of the Act dated 19.03.2018 passed by the AO, is cancelled.

10. In the result, the appeal preferred by the assessee is allowed.

This Order pronounced on 29/07/2024

Sd/-
(SUCHITRA RAGHUNATH KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 29/07/2024

S. K. SINHA

True Copy

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad