

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.389/Mum/2024
(Assessment Year :2012-13)**

Sandhya Ramdev Kunjur Flat No.03, 3 rd Floor Aqua Forte Kensington Street, Ulsoor Bangalore- 560 042	Vs.	Assistant Commissioner of Income Tax Circle 19(3) Mumbai
PAN/GIR No.AABPK9591M		
(Appellant)	..	(Respondent)

Assessee by	Shri Anil Kumar (Virtually present)
Revenue by	Shri P.D.Chougule
Date of Hearing	11/07/2024
Date of Pronouncement	25/07/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 14/08/2023 passed by NFAC, Delhi in relation to the order passed u/s.154 for the A.Y.2012-13.

2. Assessee has raised following grounds before us:-

“1. The learned CIT(A) has erred in dismissing the appeal holding that appellant needs to file a separate appeal against the order dated 22-12-2019 passed u/s. 144 rws 147 when said order is issued in electronic mode on the inactive PAN: AΛEPK5449B and

the present system does not permit the appellant to access the account bearing invalid PAN to file the appeal electronically against such order.

2. The learned CIT(A) has erred in upholding the order u/s. 154 of the learned A O which did not give any reason for holding that the relief sought for by the appellant was "beyond the scope of the Act".

3. The learned CIT-A has ignored the jurisdictional High Court judgements in Blue Star Engineering Co (Bombay) (P) Ltd vs CIT Bombay City [1967] 73 ITR 263 (Bom) and other decisions in holding that the relief sought by the appellant in her petition u/s. 154 could not be granted.

Accordingly, it is prayed that this Honourable Court allow the appeal and direct the Respondent to cancel the assessment order passed on 22-12-2019 under Section 144 on the inactive PAN."

3. The brief facts and background of the case are that certain information on NMS Model of ITD system of the department was received according to which assessee had entered into following transactions in F.Y.2011-12.

Sr. No.	F.Y.	Nature of transaction	Amount (in Rs.)
1	2011-12	Purchase of immovable property	75,00,000
2	2011-12	Purchase of Mutual Funds	70,00,000
3	2011-12	Credit card payments	3,28,284
	TOTAL		1,48,28,284

4. According to ld. AO, since assessee had not filed the return of income, he initiated the proceedings u/s.147 by issuance of notice u/s.148 dated 25/03/2019. According to ld. AO, assessee did not file any return of income for A.Y.2012-13 however in the submission before the ld. AO, assessee categorically stated that assessee had already filed the return with PAN AABPK9591M for A.Y.2012-13. However, still ld. AO held that assessee has not filed any return of income in response to notice u/s.148. Thereafter, he issued a final show-cause notice and passed the best judgment assessment u/s.144 and added the entire amount of Rs.1,48,28,284/- vide order dated 22/12/2019 u/s.144 r.w.s.147. The assessment order has been passed on other PAN AAEPK5449B.

5. Thereafter, assessee had filed petition u/s. 154 for cancelling the order u/s.144 r.w.s. 147 on the ground that it has been passed on a wrong PAN, however, ld. AO summarily rejected the application on the ground that cancelling of the assessment order u/s.144 r.w.s. 147 is beyond the scope of Section 154 of the Act.

6. The ld. CIT (A) too has upheld the order after observing as under:-

“In this case, the assessee has preferred appeal against the order passed u/s 154 of the Income Tax Act dated 10.03.2021. Consequent to the order passed u/s 147 r.w.s 144 dated 22.12.2019 in which an addition of Rs.1,48,28,284) has been made. The assessee preferred a petition u/s 154 vide letter dated 03.03.2021 in which the assessee raised several grounds which are beyond the jurisdiction of Section 154 of the Act. Petition filed by the assessed has been duly disposed by the Assessing Officer

on 10.03.2021 vide letter bearing DIN NO: ITBA/COM/17/2020-21/1031398254(1). While dismissing the application filed u/s 154, the AO has categorically told that the assessee contention for cancelling the Assessment order passed u/s 144 r.w.s. 144 of the Act is beyond the jurisdiction of section 154 of the Act.

This section is applicable only for rectifying mistakes which are apparent from records and not for cancelling the Assessment order passed. Action of the AO is in accordance with the Act. The assessee now preferred appeal against the said order passed u/s 154 of the Act in which the grounds taken are beyond the powers of Section 154 of the Act. The Assessee needs to file a separate appeal against the order u/s 144 r.w.s 147 which has not been done by the Assessee. Section 154 of the Act is limited to the rectification of mistakes apparent from record and the grounds taken by the assessee are beyond the purview of section 154 of the Act.

Hence, the grounds raised by the assessee are dismissed and the action of the AO in rejecting the rectification application filed by the assessee is upheld.”

7. Before us ld. Counsel brought on record the brief facts and background of the case. He submitted that earlier assessee had two PAN, one old PAN AAEPK5449B under which she had filed her return of income upto A.Y.2011-12. **Thereafter, assessee had taken a new PAN AABPK9591M.** This new PAN was quoted while doing the transaction of property at Bangalore. The old PAN was surrendered and was duly intimated to the department vide letter dated 29/09/2012, a copy of which has been enclosed before us in the paper book at page 66. This letter has been duly acknowledged by the department. Later on the process of surrender of old PAN was completed and there was only one active PAN of the assessee i.e. PAN AABPK9591M. The assessee had filed return of income for A.Y.2012-13 under the new /

active PAN AABPK9591M on 30/07/2012. In support, the copy of acknowledgment of ITR filed has also been filed before us. Not only that the said return was accepted but intimation u/s.143(1) was also issued under the new PAN, copy of which has been placed in the paper book at pages 76-83. Now, the ld. AO has sought to reopen the case u/s.147/148 on the premise that there were certain transactions under the old PAN AAEPK5449B including investment in the Bangalore property purchase and sale of units which in fact was carried out and reported in the new PAN. Since no return was found to have been filed in the old / inactive PAN AAEPK5449B, ld. AO had issued a notice u/s.148 on the old PAN which was already surrendered by the assessee and was inactive on the date of issuance of notice u/s.148 dated 25/03/2019. Ld. Counsel has also filed a screen short of the portal taken on 28/09/2018 showing that the old PAN was inactive on that date. The notice u/s.148 was not only addressed on the non-existing PAN but also at non-existing premises. Since assessee did not have access to her portal under old PAN AAEPK5449B; therefore, assessee submitted the return on her active PAN AABPK9591M in response to notice u/s.148 but the system did not permit and allow filing of the return. This fact was duly intimated to the ld. AO by email dated 02/05/2019 and the ld. AR of the assessee communicated to the ld. AO that he is unable to file return u/s.148 as the portal is showing no such notice available online. Copy of the e-mail sent by the AR to the ld. AO has been placed in the pages at 46 of the paper book. He further submitted that AR of the assessee again by email dated

4-5-2019, attached his power of attorney and a letter dated 4-5-2019, which informed the AO that the assessee had already filed her return for AY 2012-13 on 30/07/2012 vide Ack. no 44791734030072012 and said return should be considered as a return filed in response to the notice under Section 148. A copy of the ITR V was attached to the said letter. (Said letter and attachments are enclosed in pages 47 to 51 of the paper book). The acknowledgement for having filed the originals in hard copy across the counter on 14-5-2018 has also been enclosed at page 53 of the paper book. Again by another e-mail dated 10/05/2019, the assessee sought reasons for reopening of the assessment for which again there was no response. Left with no response, assessee again filed a letter dated 23/05/2019 and reiterating the same facts, which too has been placed in the paper book at page 54.

8. After responding to the notice under Section 148 in May 2019 both through email and also filing reply/letter across the counter at the office of the ld. AO, the assessee did not hear further from the ld. AO till November 2019. The assessee's authorised representative received on November 23rd a notice u/s 142(1) by email for submission of certain documents called for by 26-11-2019 at 3 PM. (The copy of the notice which again is addressed to a nonexistent address has been enclosed in pages 55 and 56 of the paper book). Immediately on receipt of the notice, the AR of the assessee sent an email (enclosed at page 57 of the paper book) to the ld. AO drawing attention to the earlier mail of May 4th 2019 seeking reason for re-opening of the case

for which there was no response. Further, ld. Counsel pointed out that the ld. AO did not issue any notice u/s. 143(2) despite assessee categorically stated that original return filed under PAN AABPK9591M as the return filed in response to the notice nor did he respond to any of the letters from the AR, whether through email or across tappal, that he is unable to file return electronically under the inactive PAN. On 26/11/2019 the AO of issued a show-cause notice u/s.144 dated 20/11/2019 served through post seeking compliance by 25/11/2019. Thereafter, it has been informed that there were interactions between assessee and ld. AO through e-mail and through personal meeting at AO's office and some of the documents which were filed were as *under:-*

a. Statement of Income for Asst year 2012-13, Balance Sheet and Profit & Loss Account of Enkay Traders, a proprietorship business of the applicant. (Handed over to the Respondent at his office. A copy of the documents are enclosed in pages 28 to 30 of the paper book).

b. Copies of the Bank Accounts operated by the applicant during the previous year (Sent by email. See page 60 of the paper book).

9. Further, assessee had duly stated that investment in the Bangalore House and residual investment in the Mutual Fund Units were recorded in the assets side of the said Balance Sheet submitted. Later on, at a very late stage, ld. AO shared e-mail on 08/12/2019. The assessee in response had prepared the submissions and filed the details as given in the AIR information on 25/12/2019 however, before that only an *exparte* order u/s.144 r.w.s. 147 was passed on 25/12/2019. Ld. Counsel

further informed that assessee could not file the appeal also because assessment was passed on a different PAN and there was no mechanism to file the appeal under new PAN. Thus, left with no option assessee filed a petition u/s.154 not only through e-mail but also through Registered Post and with a copy to Pr. CIT. However, there was no such response and later on ld. AO has rejected the application u/s.154 in a summary manner. Thus, he submitted that assessee can challenge the validity of the original assessment order in application u/s.154 and in support, he strongly relied upon the judgment of the Hon'ble Bombay High Court in the case of Blue Star Engineering Co (Bombay) Pvt. Ltd. vs. CIT Bombay City reported in (1967) 73 ITR 283 and judgment of the Hon'ble Rajasthan High Court in the case of CIT vs. S.S. Gupta (2001) 19 taxman 626.

10. On the other hand ld. DR submitted that challenging the validity of assessment order is beyond the scope of Section 154 and the same has likely been rejected.

11. We have heard both the parties and also perused the relevant facts and material placed on record as discussed above in detail. There is absolutely no dispute that assessee had surrendered her old PAN on 29/02/2012 and from A.Y.2012-13, assessee had been filing the return of income under the new PAN AABPK9591M. It is also a matter of record that ld. AO issued a notice u/s.148 under the old PAN AAEPK5449B which already stood surrendered and was inactive even in the portal of the department. Not only that, this fact was duly brought to the

notice of the AO during the course of assessment proceedings, but despite such intimation, ld. AO still proceeded to pass order u/s.144/147 making a huge addition. As explained by the ld. Counsel and is also evident from the communication and facts brought on record, assessee kept on pursuing the matter before the ld. AO writing various emails and letters that all these transactions which have been reported has been carried out under the new PAN and duly disclosed in the balance sheet and assessee is unable to file the return of income in response to notice u/s 148 on the portal for the reason that the old PAN was inactive. Assessee had filed the return for A.Y.2012-13 under new PAN which ld. AO has even failed to acknowledge. Thus, unsparing attitude and callousness on the part of the ld. AO has caused grave injustice to the assessee. How the ld. AO can pass the assessment order under a old PAN which was not in existence in the year 2019 when he issued notice u/s.148 which was already surrendered way back in 2012. He has not given any heed to any of the communications and letters written by the assessee and her authorised representative as discussed in the foregoing paragraphs. Thus, issuance of notice u/s.148 under a wrong PAN and passing of the assessment order is not only invalid but also void ab initio.

12. Now when assessee filed application u/s.154 stating that earlier assessment order has been passed under a wrong PAN which was not in existence, then both the authorities have stated that it is beyond the scope of Section 154. Now, the issue before us is, whether rectification application u/s.154 can be filed

challenging the validity of earlier assessment order passed u/s.144 / 147 which otherwise is admittedly an illegal order. Section 154 of the Act provides for rectification of a mistake apparent from record. “Any mistake apparent from the record” covers all mistakes discoverable from a perusal of the whole evidence in the case, or from an omission to apply certain provisions of the Act to the facts of the case, or a mistake due to an overlooking of certain aspects of the case, or a mistake arising on account of a wrong construction of any provisions of the Act. The error may be either of fact or error of law. Here in this case there was a clear cut mistake which is very glaring and there cannot be any two views that an assessment order passed u/s.144/147 on a non-existing PAN is incorrect in law. What is material u/s.154 of the Act is that, whether there is a mistake, a mistake which is clear, glaring and which is incapable of two views being taken. The expression ‘record’ has to be construed and understood in which it appears and in context of expression ‘apparent from the record’ in section 154, ‘record’ would mean the record of the entire proceedings of the case including the documents and material produced by the assessee and taken on record by the authorities, which were available at the time of passing of the order. Once at the time of passing of the order the material fact that assessee had filed the return of income under a new PAN and all the transactions have been disclosed then, taking cognizance of old PAN which was already surrendered, does constitutes a mistake apparent from record which falls within the scope and ambit of rectification u/s.154. The **Hon’ble**

Supreme Court in the case of Anchor Pressings (P) Ltd. Vs CIT (1986) 161 ITR 159 (SC) held that the jurisdiction u/s 154 to rectify the mistake is much wider than provided in Order XLVII, rule 1 of the CPC, 1908, and therefore, relief could be allowed in the rectification proceedings if all the factual material necessary for allowing the relief were available on record and such relief could not be denied merely because the assessee omitted to claim the same. Thus, the validity of assessment order u/s.144/147 can be challenged because not only there is a mistake apparent from record but also is a mistake of law. Accordingly, we quash the assessment order u/s.144 / 148 dated 22/12/2019 passed u/s.144 r.w.s. 147. Consequentially appeal of the assessee is allowed.

13. In the result, appeal of the assessee is allowed.

Order pronounced on 25th July, 2024.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 25/07/2024
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai