

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "B" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI GD PADMAHSHALI, , ACCOUNTANT MEMBER

M.A.Nos.240 to 245/PUN./2023

Arising out of

I.T.A.Nos.473, 475 to 479/PUN./2022

Assessment Years 2010-2011 to 2012-2013, 2014-2015 to 2016-2017

Shri Prabhatchandra Sawailal Jain Vatsalya, N.S. 6 th Road, JVPD Scheme, Vile Parle, Mumbai – 400 056 Maharashtra.PAN AAKPJ3257E	vs.	The DCIT, Central Circle-1(1), Aaykar Sadan, Bodhi Towers, Pune. Maharashtra.
(Applicant)		(Respondent)

For Assessee :	Shri Mahaveer Jain
For Revenue :	Shri Ramnath Murkude

Date of Hearing :	09.08.2024
Date of Pronouncement :	28.08.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

These assessee's instant six miscellaneous applications M.A.Nos.240 to 245/PUN./2023 filed u/s.254(2) of the Income Tax Act, 1961 (in short "the Act") seek to recall/rectify the tribunal's common order dated 26.04.2023, dismissing it's corresponding main appeals I.T.A.Nos.473, 475 to 479/PUN./2022; respectively.

Heard both the parties. Case files perused.

2. The assessee pleads the following substantive grounds in the instant miscellaneous application :

1. That Ld. AO erred in facts and in law, in issuing reopening notice u/s 147 of the Act without appreciating the fact that in the case of search and seizure of third party, AO is duty bound to initiate proceedings u/s 153C in case of person relating to whom some material is found. Thus, action of Ld. AO initiating the proceedings u/s 148 is null and void and deserves to be set aside.

In the present case, on perusal of the reason to believe, it is clear that the reopening under section 147 of the Act was done based on the material found during the course of search at Bhoomi Group. The relevant extract of the reasons to believe is reproduced here-in-below :

An information has been received from office of DCIT Central Circle 6(2) Mumbai regarding payments received in cash from Prabhat Chandra Jain (P AN AAKPJ3287E) for AY 2010-11 Perusal of Information revealed that a search and seizure action was conducted by the Unit -3 investigation wing Mumbai on M/s. Ekta & Bhoomi Group on 05-10-2015 During the course of search and survey action, incriminating data of M/s. Bhoomi Group has been found which is related to cash transactions executed by the Bhoomi group with different parties, In the Search action u/s 132 at the premises of Smt. Vasumali B Mody at A-

202, Raj Tara CHS Ltd. Azad Road Ville Parle (E) Mumbai 400057 a Laptop containing data was seized from the above- mentioned premises It has been duly admitted by directors of Bhoomi group, Sh. Akshay Doshi in hpost search statement recorded u/s 131 dated 28.12.2015 and 4.1.2016 that this laptop contains unaccounted transactions of Bhoomi group.

The data has been maintained in the ledger accounts as well as the folder meeting documents As per data maintained in seized laptop, name of P.C Jain has been found in different ledgers and folders After analysis of data it has been found that PC Jain has made capital contribution In cash towards partnership projects with M/S Bhoomi group of companies. As per data found in laptop total capital contribution made by PC Jain in cash amounts to Rs 15 99,00,000/- for A Y 2010-11"

Further, the aforesaid fact is also clear from the Assessment Order, wherein the Ld. AO had himself recorded a finding that the re-opening is done based on material gathered during the course of search on Bhoomi Group. The para 3 of the Assessment order is reproduced here-in-below:

"During the course of search and survey action, incriminating data of M/s Bhoomi Group has been found, which is related to cash transactions executed by M/s Bhoomi Group with different parties.

As per data maintained in seized laptop, name of P.C Jain has been found in different ledgers and folders".

Therefore, during the course of hearing and in the written submission, it was submitted that as per the scheme of the Act if information or seized documents pertaining to third party is found during the course of search then the proceeding u/s 153C of the Act should be initiated against the third party. In the present case, the alleged documents and ledgers pertaining to the assessee was seized during the course of search on M/s. Bhoomi Group. Therefore, the assessment should have been done u/s 153C of the Act and not u/s 147 of the Act.

In support of the above, the appellant has placed heavy reliance on following judgment of High Court and Tribunals which assessment should be undertaken u/s 153C of the Act based on the material seized during the course of search of another party :

- i. Hon'ble Madras High Court in the case of Karti P. Chidambaram 2021 (7) TMI 393.*

- ii. *G. Koteswara Rao vs. DCIT [2015] 64 taxmann.com 159 (Visakhapatnam - Trib.).*
- iii. *Dr. Mable Katyare vs. ITO (ITA 287/Ran/2017)*
- iv. *VL Khandge vs. ITO (ITA No. 3275/Mum/2015 & 3276/Mum/2015)*
- v. *Babanlal Agarwal vs. ITO (ITA 1427/ Pun/2011)*

However, this Hon'ble Tribunal vide order dated 25.04.2022 has held that from a combined perusal of all these case files there is no material in these case files found or seized during the course of search which could be held to be belonging or pertaining or relating to this assessee namely Shri P.C. Jain so as to trigger section 153C mechanism in motion.

*It is submitted that from the aforesaid reason to believe as well as assessment order it is crystal clear that the case was re-opened based on material (i.e., documents and ledgers) seized from laptop during the course of search which belong to the assessee namely Shri P.C. Jain. Further, the Hon'ble Supreme Court in a recent judgment of *Income Tax Officer versus Vikram Sujitkumar Bhatia [Civil Appeal No. 911 OF 2022]* has held that any material found during course of search with respect to "other person" has to be interpreted in the widest possible manner for the purpose of invocation of section 153C of the Act. Therefore,*

it is humbly submitted that the said order has been passed based on presumption of wrong facts that no material was found or seized during the course of search, In view of the same, we pray that your Honours may be pleased to exercise the powers vested under Section 254(2) of the Act.

Further, the appellant had also relied on the case of Abhishek Dhanotia vs. ITO (ITA No.655/Ind/2018), wherein based on the same search carried out at the premises of Bhoomi Group, the Hon'ble Indore Tribunal had held that since the material for initiating proceedings emanated from search, the AO ought to have invoked provisions under section 153C and not section 147 of the Act. However, while disposing the appeal the above decision of Hon'ble Indore Tribunal was not taken into consideration. In view of above facts, we pray that your Honours may be pleased to exercise the powers vested under Section 254(2) of the Act.

We place reliance upon the decision of the Hon'ble supreme court in the case of Honda Siel Power Products Ltd. v. CIT [2007] 165 taxman 307 (SC) wherein it has been held that adjudication of grounds without considering decisions cited by the appellant would allow rectification

u/s. 254(2) of the Act. Relevant head notes are reproduced hereunder:

"12. As stated above, in this case we are concerned with the application under section 254(2) of the 1961 Act. As stated above, the expression "rectification of mistake from the record" occurs in section 154. It also finds place in section 254(2). The purpose behind enactment of section 254(2) is based on the fundamental principle that no party appearing before the Tribunal, be it an assessee or the Department, should suffer on account of any mistake committed by the Tribunal. This fundamental principle has nothing to do with the inherent powers of the Tribunal. In the present case, the Tribunal in its Order dated 10.9.2003 allowing the Rectification Application has given a finding that Samtel Color Ltd. (supra) was cited before it by the assessee but through oversight it had missed out the said judgment while dismissing the appeal filed by the assessee on the question of admissibility/allowability of the claim of the assessee for enhanced depreciation under section 43A. One of the important reasons for giving the power of rectification to the Tribunal is to see that no prejudice is caused to either

of the parties appearing before it by its decision based on a mistake apparent from the record.

13. "Rule of precedent" is an important aspect of legal certainty in rule of law. That principle is not obliterated by section 254(2) of the Income-tax Act, 1961. When prejudice results from an order attributable to the Tribunal's mistake, error or omission, then it is the duty of the Tribunal to set it right. Atonement to the wronged party by the court or Tribunal for the wrong committed by it has nothing to do with the concept of inherent power to review. In the present case, the Tribunal was justified in exercising its powers under section 254(2) when it was pointed out to the Tribunal that the judgment of the coordinate bench was placed before the Tribunal when the original order came to be passed but it had committed a mistake in not considering the material which was already on record. The Tribunal has acknowledged its mistake, it has accordingly rectified its order. In our view, the High Court was not justified in interfering with the said order. We are not going by the doctrine or concept of inherent power. We are simply proceeding on the basis that if prejudice had resulted to the party, which prejudice is attributable to the Tribunal's mistake, error or

omission and which error is a manifest error then the Tribunal would be justified in rectifying its mistake, which had been done in the present case."

In view of above we request Your Honor's to consider this application."

3. Suffice to say, the assessee's sole substantive argument during the course of hearing is that we have erred in law and on facts in upholding validity of sec.148/147 proceedings despite the fact that it is a search case and therefore, both the lower authorities could only have initiated sec.153 "processing" motion than the reopening forming subject matter of adjudication in all these miscellaneous applications.

4. We have given our thoughtful consideration to the assessee's instant vehement contentions and find no substance therein. We wish to make it clear that various landmark judicial precedents i.e., [2008] 305 ITR 277 (SC) ACIT vs. Saurashtra Kutch Stock Exchange Ltd.; [2021] 133 taxmann.com 41 (SC) CIT vs. Reliance Telecom Ltd.; and [1993] 203 ITR 497 (Bom.) CIT vs. Ramesh Electric and Trading Co. have settled the law that the ambit and scope of sec.254(2) rectification mechanism is meant to deal with apparent mistakes on record than venturing in detailed roving enquiries. In light of foregoing settled legal proposition that we

conclude that our impugned order has sufficiently taken note of the assessee's arguments thereby concluding that both lower authorities have rightly initiated sec.148/147 proceedings since all the relevant parameters of sec.153C proceedings had not been satisfied as per seized material. We thus conclude that such a recourse in the instant sec.254(2) rectification mechanism requiring us to re-appreciate the assessee's arguments afresh would hardly be justified since not sustainable in law. Rejected accordingly.

5. These assessee's six miscellaneous applications M.A.Nos.240 to 245/PUN./2023 are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 28.08.2024.

Sd/-
[GD PADMAHSHALI]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 28th August, 2024

VBP/-
Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned.
4.	D.R. ITAT, "B" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.