

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER

I.T.A. No. 3211/Mum/2024
Assessment Year: 2017-18

Travel Retail Services Private Limited A Block, South Wing Shiv Sagar Estate Dr. Annie Besant Road Worli Mumbai - 400018 [PAN: AADCT1697C]	Vs	Asstt. Commissioner of Income Tax, Circle-8(3)(1), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Samir Shah, A/R
Revenue by :	Shri R.R. Makwana, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 29/08/2024
घोषणा की तारीख/Date of Pronouncement : 29/08/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 14/05/2024 by NFAC Delhi [in short 'ld. CIT(A)] pertaining to AY 2017-18.

2. The sum and substance of the grievance of the assessee is that, the ld. CIT(A) erred in confirming the action of the AO in passing the order u/s 154 of the Act thereby confirming the addition of Rs.2,76,953/- made by the AO u/s 36(1)(va) of the Act.

3. Briefly stated the facts of the case are that the assessment was framed u/s 143(3) of the Act vide order dt. 25/12/2019 wherein the returned Nil income was assessed as Nil income.

3.1. Subsequently, on perusal of Form 3CD report, the AO found that the employees' contribution to provident fund and ESI fund were not paid before the due date. According to the AO since the mistake was apparent from the records, invoking the provisions of Section 154 of the Act and drawing support from the decision of the Hon'ble Supreme Court in the case of *Checkmate Services Pvt. Ltd. vs. CIT reported in [2022] 143 taxmann.com 178 (SC)*, the AO rectified the alleged mistake apparent from record and made addition of Rs. 2,76,953/-.

3.2. The assessee carried the matter before the Id. CIT(A) but without any success.

4. Before us, the Id. Counsel for the assessee stated that while framing the original assessment order, the AO was well aware of the decision in favour of the assessee, insofar as there was delay in deposit of EPF & ESI and after verifying the claim, the AO allowed it. Subsequently, when the Hon'ble Supreme Court reversed the decision which were in favour of the assessee, the AO initiated rectification proceedings. It is the say of the Id. Counsel that at the time of passing the assessment order, there was no mistake apparent from record. Hence the assumption of jurisdiction u/s 154 of the Act is bad in law.

Per contra, the Id. D/R strongly supported the findings of the AO.

5. We have given a thoughtful consideration to the orders of the authorities below. We are of the considered view that the quarrel is not much in respect of the merits of the addition but whether the AO can exercise powers u/s 154 of the Act drawing support from the subsequent judgment of the Hon'ble Supreme Court when, at the time of framing the assessment order, there were judgments galore in favour

of the assessee. The question of relying on any judgment in favour of the revenue to invoke powers u/s 154 of the Act has not manifested from order u/s 154 of the Act. Thus, both the lower authorities erred in rectifying the assessment order on the basis of the judgment of the Hon'ble Supreme Court in the case of *Checkmate Services Pvt. Ltd. (supra)*.

6. In the case of *CIT vs. Mahavir Drilling Co.* reported in 273 ITR 201 (MP), investment allowance claimed by the assessee on drilling machines was granted by the AO. The AO later realized that the investment allowance could not have been claimed by the assessee on the drilling machine or in other words, it was noticed that the same was wrongly granted. However, by order dated 19/10/1992, the AO withdrew the benefit of investment allowance by taking recourse to the provisions of rectification. The revenue submitted that in the light of law laid down by Supreme Court in the case of *CIT v. N. C. Budharaja & Co. [1993] 70 Taxman 312/204 ITR 412* the issue in relation to claiming of investment allowance in the activity of drilling stood decided in favour of revenue. It was contended that once the issue is decided by the Hon'ble Supreme Court against an assessee, the action on the part of AO in invoking section 154 of the Act rectifying the mistake in wrongly granting the benefit to assessee in the original assessment order could always be withdrawn. The assessee submitted that the law laid down in *N.C. Budharaja & Co. case (supra)* was prospective in nature, therefore, the same would not apply to this case because, on the date when AO granted relief to assessee, the issue in relation to claiming of investment allowance on drilling activity was a debatable one. The Tribunal allowed assessee's appeal on the ground that the Hon'ble Supreme

Court's decision in *N. C. Budharaja & Co. (supra)* was not available on the date of rectification, i.e., on 19/10/1992, therefore, the same could not be made a basis for withdrawing the investment allowance. Hon'ble High Court held that as on the date, when the assessee claimed the benefit of investment allowance, i.e., on 31/3/1989, the issue in regard to its claim was debatable one as there was cleavage of judicial opinion between several High Courts. On the date of rectification i.e., on 19/10/1992, the decision in *N. C. Budharaja & Co. (supra)* was not rendered by the Supreme Court, therefore, invocation of provisions of section 154 was not justified.

7. In view of the above discussion and the ratio of law laid down in the aforementioned judgments, we set aside the findings of the Id. CIT(A) and direct the AO to delete the impugned addition/disallowance.

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

Order pronounced in the Court on 29th August, 2024 at Mumbai.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 29/08/2024

S.S.P.

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

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

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai