

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA**

**BEFORE : SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

ITA No. 158/Agr/2018
Assessment Year: 2008-09

Pawan Singh Bundela, 334, Civil Lines, Lalitpur.	Vs.	Income-tax Officer, 2(3)(4), Lalitpur.
PAN : ACBPB5018L		
(Appellant)		(Respondent)

Assessee by	Sh. Somil Agarwal, C.A. Sh. Rakesh Gupta, C.A.
Department by	Sh. Shailendra Shrivastava, Sr. DR

Date of hearing	11.02.2025
Date of pronouncement	11.02.2025

ORDER

Per Satbeer Singh Godara, Judicial Member:

This assessee's appeal for assessment year 2008-09, arises against the Commissioner of Income Tax (Appeals)-2, Agra's order dated 30.11.2017 passed in Appeal No. 202/CIT(A)-2/Agra/ITO-2(3)(4)/Lalitpur/2016-17, involving proceedings under section 154(1A) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Heard both the parties. Case file perused.
3. Coming straightway to the sole substantive issue between the parties regarding correctness of impugned rectification process

undertaken by learned Assessing Officer, both the parties invited our attention to the impugned order dated 04.11.2016 reading as under :

“Return declaring income of Rs. 4,26,700/- was filed by the assessee electronically on 29/03/2009. The case was selected for scrutiny through CASS. The then AO finalized the assessment u/s 144 of the Act on 26/11/2010 on an income of Rs. 72,63,135/-.

Aggrieved by the said order, the assessee filed appeal before the Hon'ble CIT(A)-II, Agra which was dismissed by the Hon'ble CIT(A)-II, Agra vide his order dated 31/01/2012 upholding the addition made by the AO and held that "The assessee did not appear before the AO and no evidences were filed before him and I have rejected the request of the appellant to admit additional evidences, therefore, it logically follow that the assessment order passed by the AO does not require any interference. Therefore, the grounds of appeal are rejected".

The assessee further went into appeal before the Hon'ble bench of ITAT, Agra and the second appeal of the assessee was also dismissed by the Hon'ble bench of ITAT Agra vide order dated 14.09.2012. It was observed by the Hon'ble bench of ITAT, Agra that "In the present case despite service of several statutory notices, the assessee did not comply with any of the notices and did not produce evidences before the AO. Therefore, conditions of Rule 46A above have not been satisfied by the assessee. The Ld. CIT(A), therefore, rightly relied upon the decision of Hon'ble Allahabad High Court in the case of Ram Prasad Sharma (supra) and, therefore, rightly refused to admit the additional evidences at the first appellate stage. Exparte assessment order was also correctly framed by the assessing officer for non compliance. Resultantly, there is no evidence available on record to dispute the correctness of the addition made by the AO. The assessee in ground no. 1 referred to sub rule(4) of rule 46A in the matter. which is not applicable in the matter because the Ld. CIT(A) has not directed for production of any evidence. Considering the totality of facts and circumstances

and that no other reason have been given for not filling the evidences before the AO at the assessment stage, we do not find any infirmity in the order of the Ld. CIT(A) in dismissing the appeal of the assessee."

Subsequently, the assessee filed an application for rectification as 154 of the Act dated 17/01/2013. The then AO rectified the orders of his predecessor AO vide his order 30.03.2013 and deleted the additions made vide order dated 26.11.2010, which had been confirmed by the Ld. CIT(A) as well as Hon'ble ITAT, Agra

This rectification order dated 30.03.2013 is patently wrong is so far as there is a mistake of Law apparent from record. Consequently a notice under section 154 of the Act dated 29.06.2016 was served fixing the date of compliance 18.07.2016. On 06.07.2016, Shri Sanjeev Kumar Jain, FCA attended and filed power of attorney and also filed written submission which is placed on record. The case was discussed with him.

The counsel of the assessee argued that the proposed rectification is against the provision of section 154 and is arbitrary, illegal and beyond the jurisdiction. The counsel of the assessee against retreated the same facts which are not relevant at this stage. In view of the facts of the case. I am of the view that the rectification done by the AO vide his order dated 30.03.2013 was illegal and incorrect. The application filed by the assessee on 17.01.2013 has been considered and found untenable.

In the result, the reply of the assessee is rejected and the demand of Rs. 32,66,383/- along with interest up to the date created by the order dated 26.11.2010 is revived. Notice of demand, challan and computation of income are issued."

4. Suffice to say, we are of the considered view that such a de-facto review by the learned Assessing Officer setting into motion section 154

is not permissible as settled in T. S. Balaram ITO v. Volkart Bros (1971) 82 ITR 50 (SC). We thus, quash the impugned rectification for this precise reason. All other pleadings stand rendered academic.

5. This assessee's appeal is allowed.

Order pronounced in the open court on 11TH February, 2025.

**Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER**

**Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER**

Dated: 11TH February, 2025.

*aks/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, Agra