

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, KOLKATA**

**BEFORE SHRI RAJESH KUMAR, AM  
AND  
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No. 2118/KOL/2024  
(Assessment Year:2015-16)**

**MC Mowjee & Co. Private  
Limited**  
118, Tollygunge Circular Road,  
Tollygunge, Kolkata-700053,  
West Bengal

**Vs.**

**ITO Ward-4(1)**  
Aaykar Bhavan, P-7,  
Chowringhee Square,  
Kolkata-700069  
West Bengal

**(Appellant)**

**(Respondent)**

**PAN No. AABCM7491D**

**Assessee by** : Shri Akkal Dudhewala, AR  
**Revenue by** : Shri Arup Chatterjee, DR

**Date of hearing:** 10.03.2025  
**Date of pronouncement :** 17.03.2025

**ORDER**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 06.09.2024 for the AY 2015-16.

02. The only issue pressed at the time of hearing by the Counsel of the assessee is against the ground no.2, which is extracted below:-
03. The facts in brief are that the assessee filed the return of income on 16.10.2015, declaring a total income of ₹29,80,320/-, which was processed u/s 143(1) of the Income-tax Act, 1961 (the Act). The case of the assessee was selected for limited scrutiny and statutory notices were duly issued and served upon the assessee. The assessee



complied with the said notices and by filing the written submission as well as evidences as called for by the Id. AO and finally, after accepting the return framed the assessment u/s 143(3) of the Act on 07.12.2017. Thereafter, the assessee filed a rectification petition dated 05.01.2018 and accordingly rectification order was passed on 11.07.2018 allowing MAT credit and giving refund to the assessee. Thereafter successor AO initiated the rectification proceedings and passed order u/s 154 of the Act on 22.04.2019 by disallowing the director remuneration to the tune of ₹31,35,000/- paid in cash.

04. In the appellate proceedings, the Id. CIT (A) dismissed the appeal of the assessee by mis-construing the facts as to the assessee's age. The Id. CIT (A) noted that in Para 1.4, the appellate stated that Mr. Sajid Mowjee is aged 61 years, however Id. CIT(A) noted that in Para 1.6 as well as in the accompanying affidavit, the age of Mr. Sajid Mowjee is shown as 66 years.
05. After hearing the rival contentions and perusing the materials available on record, we find that the Id. AO has initiated the proceedings u/s 154 of the Act by passing an order by making disallowance of ₹31,35,000/- in respect of director's remuneration paid in cash, which is not an apparent mistake in the records and cannot be rectified by resorting to the provisions of Section 154 of the Act. In our opinion, the said issue is debatable issue and cannot be rectified u/s 154 of the Act. We note that the correct appreciation of this issue involves the interpretation of provision of the Act and therefore, the jurisdiction exercise u/s 154 of the Act is bad in law. The case of the assessee find force from the decision of Hon'ble Apex Court in the case of CIT vs. Hero Cycles (P). Ltd. 228 ITR 463 (SC), wherein Hon'ble Supreme Court held that rectification u/s 154 of the



Act can only be made when glaring mistake of fact or law has been committed by the officer passing the order and it becomes apparent from the record. Rectification is not possible if the question is debatable. Moreover, the point which is not examined on fact or in law cannot be dealt with as mistake apparent on the record. Similarly, the Hon'ble Calcutta High Court in the case of Md. Serajuddin & Bros. Vs. CIT (210 taxmann 84) has held as under:-

*"1.4. Similar view was expressed by the Calcutta High Court in the case of Md. Serajuddin & Bros. Vs CIT (210 Taxman 84). In the decided case, the AO had initiated rectification proceedings u/s 154 on account of excessive claim of deduction by the assessee firm on account of partner's remuneration u/s 40(b) of the Income-tax Act, 1961. It was the Department's contention that profits of the business alone was to be considered as 'book profit' for the purposes of Section 40(b) and income earned from any other sources was to be ignored. On appeal the assessee challenged the validity of the proceedings u/s 154 since the question of determination & quantification of partner's remuneration was a debatable question both on facts and in law. The High Court accepted the assessee's contention and held the question of manner of determination of 'book profit for the purposes of Sec 40(b) was a contentious issue and had been considered by various judicial forums. In the circumstances it was held that such debatable issue cannot be a ground for rectification under Section 154 of the said Act and therefore the order passed u/s 154 was quashed."*

06. Considering the facts of the assessee's case in the light of aforesaid decisions, we are set aside the order of the Id. CIT (A) and direct the Id. AO to delete the addition.

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

Order pronounced in the open court on 17.03.2025.

Sd/-  
(PRADIP KUMAR CHOUBEY)  
(JUDICIAL MEMBER)

Sd/-  
(RAJESH KUMAR)  
(ACCOUNTANT MEMBER)

Kolkata, Dated: 17.03.2025

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Kolkata