

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.1494 to 1496/Chny/2024
निर्धारण वर्ष/Assessment Years: 2016-17 to 2018-19

M/s. ILJIN Automotive Pvt. Ltd., Plot No.B1 & B2, SIPCOT Industrial Park, Irrungattukottai, Sriperumbudur Taluk, Kancheepuram District, Tamilnadu – 602 117.	v.	The ACIT, Corporate Circle-2(1), Chennai.
[PAN: AAACI 2641 E]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr. M.N.Rangamani, CA, Ms. Malvi Sheth, CA
प्रत्यर्थी की ओर से /Respondent by	:	Mr. Shivanand K. Kalakeri, CIT
सुनवाईकीतारीख/Date of Hearing	:	16.04.2025
घोषणाकीतारीख /Date of Pronouncement	:	26.05.2025

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee company against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter referred to as "the Ld.CIT(A)"), Delhi, all dated 19.03.2024 for the Assessment Years (hereinafter referred to as "AY") 2016-17 to 2018-19.



:: 2 ::

2. At the outset, the Ld.AR of the assessee brought to our notice that the assessee has filed an additional ground of appeal for all the captioned appeals, which challenges the very jurisdiction of the AO to have passed the rectification order without following the statutory procedure stipulated therein, which additional common ground is reproduced as under:-

On the facts and circumstances of the case and in law, the rectification order under section 154 read with section 143(3) of the Income-tax Act, 1961 ('the Act') dated 19 February 2021 is without jurisdiction as the said order was passed without providing an opportunity of being heard as required under section 154(3) of the Act which is in violation of principles of natural justice and thereby, liable to be quashed.

3. The Ld.DR opposed admitting of the aforesaid additional ground. However, we note that this is a legal issue and adjudication of the said ground is essential for rendering substantial justice and doesn't require any fresh investigation into the facts and the same is essentially a question of law. Therefore, we admit the additional ground by relying on the decision of the Hon'ble Supreme Court in the case of **NTPC Ltd. v. CIT reported in [1998] 229 ITR 383 (SC)**.

4. The brief facts relating to the aforesaid additional ground of all the captioned assessment years are that the assessee had filed Income Tax Returns (ITRs) for captioned three (3) assessment years, which ITRs were later selected for scrutiny and assessment orders u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was duly passed against the assessee. The AO later has passed the impugned



ITA Nos.1494 to 1496/Chny/2024
(AYs 2016-17 to 2018-19)
M/s. ILJIN Automotive Pvt. Ltd.

:: 3 ::

rectification orders u/s.154 of the Act for all the three (3) assessment years by making the following enhancement/disallowances as noted by the Ld.CIT(A) in respect of all the three (3) assessment years, which are reproduced as under:-

For AY 2016-17:

2. Brief facts of the case is that the appellant is a Private Limited company incorporated under the companies act and is engaged in the business of manufacture of automobile components. It has filed its return of income for the AY 2016-17 on 30/11/2016. The return of the appellant was selected for scrutiny under CASS. Subsequently, assessment u/s 143(3) was completed by AO on 23/11/2019 assessing total income at Rs.3,81,21,110/-, Further, the AO has initiated rectification proceeding u/s 154 of the Act. After consideration the fact of the case, the AO has passed rectification order u/s 154 of the Act and assessing total income at Rs.46,08,30,548/-, In the rectification order, the AO had denied the brought forward of loss of Rs.43,08,30,548/- stating that no brought forward was available.

For AY 2017-18:

2. Brief facts of the case is that the appellant is a Private Limited company incorporated under the companies act and is engaged in the business of manufacture of automobile components. It has filed its return of income for the AY 2017-18 on 30/11/2017 admitting total 1 income at Rs.61,88,22,620/-. The return of the appellant was selected for scrutiny under CASS. Subsequently, assessment u/s 143(3) was completed by AO on 31/08/2021 computing total income at Rs.62,29,74,010/-, The AO has made addition of Rs.41,51,390/- on account of disallowance of depreciation. Further, the AO has passed rectification order u/s 154 of the Act and denying MAT credit of Rs.6,64,38,277/- and stated record.

For AY 2018-19:

2. Brief facts of the case is that the appellant is a Private Limited company incorporated under the companies act and is engaged in the business of manufacture of automobile components. It has filed its return of income for the AY 2018-19 on 26/11/2018 admitting total income at Rs.82,54,22,300/-. The return of the appellant was selected for scrutiny under CASS. Subsequently, assessment u/s 143(3) was completed by AO on 13/09/2021 accepting the returned income of the appellant. Further, the AO has passed rectification order u/s 154 of the



:: 4 ::

Act and denying MAT credit of Rs.2,73,59,655/- and stated the mistake is apparent from record.

5. Aggrieved by the aforesaid action of the AO for the respective assessment years, the assessee preferred respective appeals before the Ld.CIT(A) who was pleased to confirm the action of the AO. Aggrieved, the assessee is before us and has raised the aforesaid additional ground for all the captioned assessment years.

6. Having heard both the parties and after perusal of the records, since the assessee is challenging the action of the AO passing the rectification order u/s.154 of the Act, it would be gainful to reproduce relevant portion of the section 154 which reads as under:

s.154. Rectification of mistake -

s.154(1) With a view to rectifying any mistake apparent from the record an income-tax authority referred to in section 116 may, -

- (a)
- (b)
- (c)
- (d)

(2) Subject to the other provisions of this section, the authority concerned-

(a) may make an amendment under sub-section (1) of its own motion, and

(b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee, [or by the deductor] [or by the collector] and where the authority concerned is the [***] [Commissioner (Appeals)] by the [Assessing] Officer also.

(3) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the



:: 5 ::

assessee [or the deductor] [or the collector] shall not be made under this section unless the authority concerned has given notice to the assessee [or the deductor] [or the collector] of its intention so to do and has allowed the assessee [or the deductor] [or the collector] a reasonable opportunity of being heard.

(4)

(5)

(6)

(7) Save as otherwise provided in section 155 or sub-section (4) of section 186, no amendment under this section shall be made after the expiry of four years [from the end of the financial year in which the order sought to be amended was passed].

7. A plain reading of the aforesaid section as it stood, would reveal that it deals with the rectification of mistakes apparent on the face of record of an order, by an Income tax Authority (in this case the AO), on his own motion or by the assessee or by the Ld.CIT(A), at any time within four (4) years from the end of the Financial Year in which the order sought to be amended was passed. Sub-section (3) mandates that no such rectification shall be made unless, the AO has given notice to the assessee with an intention to enhance the assessment or reduce a refund or otherwise increase the liability of the assessee. Therefore, if the AO intends to enhance the assessment or reduce the refund, then, he acting u/s.154 must give assessee a reasonable opportunity of being heard. Since such a requirement of law is provided u/s.154 of the Act, and assessee alleges non-compliance to the same, in order to find out as to whether there is any merit in the contention of the assessee, we called for Remand Report from the AO as to whether any such notice was issued to



ITA Nos.1494 to 1496/Chny/2024
(AYs 2016-17 to 2018-19)
M/s. ILJIN Automotive Pvt. Ltd.

:: 6 ::

the assessee facilitating reasonable opportunity of being heard as provided in the statute; and the Ld.DR has placed before us a copy of the Remand Report dated 10.03.2025 which is reproduced as under:

GOVERNMENT OF INDIA
MINISTRY OF FINANCE, INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE-1 (1), ROOM NO. 611, WANAPARTHY BLOCK, 6TH FLOOR,
#121, MAHATMA GANDHI ROAD, NUNGAMBAKKAM, CHENNAI-600 034

Tel No: 044-28338494, e-mail: chennai.dcIt.c1@incometax.gov.in

F. No. AAACI2641E/ACIT/CC1(1)/2024-25

Date: 10:03.2025

To
The Income Tax Officer.
O/o CIT(DR)-1.
A-Bench, ITAT, Chennai

Sub: Details regarding opportunity extended to assessee before passing order u/s.154 in case of M/s ILJIN AUTOMOTIVE PRIVATE LIMITED for A.Y. 2016-17, 2017-18 & 2018-19

Ref: Letter dated 10.03.2025 from The Income Tax Officer, O/o CIT(DR)-1, A-Bench, ITAT, Chennai.

Vide above referred letter, the details of the notices issued u/s.154(3) was asked in the case of M/s. ILJIN AUTOMOTIVE PRIVATE LIMITED for A.Y. 2016-17, 2017-18 & 2018-19.

On examination of the available records, the details found are as under:

AY	Date of order u/s.154	Date of notice u/s.154	Delivery status
2016-17	19.02.2021	Cannot be ascertained from the available physical record and ITBA No notice copy found	-
2017-18	04.11.2022	Cannot be ascertained from the available physical record and ITBA No notice copy found	-
2018-19	22.11.2022	09.11.2022 Through ITBA	Email delivered on 25.11.2022

However, reduction of loss is as per the provisions of section 155(4) and assessee may not be given the benefit of procedural aspect of giving opportunity as no prejudice is caused by not giving opportunity. Further, the amendment is not due to enhancing the assessment or reducing the refund or otherwise increasing the liability and cannot be read to mean, when a loss claimed by assessee in return of income becomes apparent mistake due to assessment in other year.

Yours Faithfully,
Sd/-
(D.V. Subrahmanyam)
Assistant Commissioner of Income Tax
Corporate Circle-1(1), Chennai-34



:: 7 ::

Encl: ITMR for 2016-17, 2017-18 & 2018-19.

8. A perusal of the aforesaid Remand Report shows that for AY 2016-17 & 2017-18, the AO couldn't trace out a copy of notice u/s.154 of the Act from the physical record maintained by him, as well as that of the ITBA; and for AY 2018-19, the AO states that copy of the notice dated 09.11.2022 was traced in ITBA but actually delivered by e-mail on 25.11.2022. In this regard, it is noted that for AY 2018-19, the AO passed the rectification order u/s.154 of the Act, three (3) days before the notice was delivered i.e.22.11.2022. Thus, it is an undisputed fact that for AY 2016-17 & 2017-18, no notice u/s.154(3) of the Act was issued before enhancing the assessment and for AY 2018-19, even though notice dated 09.11.2022 was issued by the AO, but it was delivered to the assessee only by e-mail on 25.11.2022, which means that the notice u/s.154 of the Act for AY 2018-19 has not been given to the assessee before passing the rectification order on 22.11.2022. Thus, we find that there has been a failure of sending notice to the assessee u/s.154(3) of the Act for AY 2016-17 & 2017-18; and for AY 2018-19, even though notice was sent, it was delivered in the e-mail account of the assessee after three (3) days of passing of the rectification order. Though such a fact i.e. of receiving such a notice after three (3) days is contested by the assessee and the stand of the assessee is that it has not received



ITA Nos.1494 to 1496/Chny/2024
(AYs 2016-17 to 2018-19)
M/s. ILJIN Automotive Pvt. Ltd.

:: 8 ::

any notice u/s.154 of the Act for AY 2018-19, be that as it may, the Remand Report of the AO itself admits that the notice dated 09.11.2022 for AY 2018-19 was delivered to the assessee only on 25.11.2022, which was undisputedly after passing the rectification on 22.11.2022. So there is per-se violation of statutory procedure prescribed by statute as noted supra. Thus, we note that no notice was served upon the assessee before the rectification order was passed for AY 2016-17 & 2017-18 and even for AY 2018-19 and thus, department failed to demonstrate that assessee had been given reasonable opportunity of being heard by AO before he passed the impugned orders u/s.154 of the Act. Thus, we find there is violation of statutory procedure prescribed by section 154 by the AO before he took the impugned action of rectifying the earlier order, which resulted in enhancing an assessment/reducing a refund/increase the liability of the assessee. Therefore, we can't countenance the action of the AO omitting to issue statutory notice u/s.154(3) of the Act for AY 2016-17 & AY 2017-18 as well as the AO's failure to dispatch/deliver the notice for AY 2018-19 before passing the rectification order for all the captioned Assessment Years. For such a proposition, we rely on the decision of the Hon'ble Supreme Court in the case of **M. Chockalingam & M. Meyyappan v. CIT reported in (1963) 48 ITR 34 (SC)**, wherein, the Hon'ble Supreme Court held that it is more so in this case,



:: 9 ::

where the proviso to section 35 itself makes it incumbent upon the ITO to give notice and hearing to assessee when the effect of the rectification would be the enhancement of the assessment [section 35 of the Income Tax Act, 1922 is noted to be *pari materia* with that of section 154 of the Income Tax Act, 1961].

9. Coming to the contention of the department that failure to issue notice didn't cause any prejudice to the assessee. We are of the view that such a contention can't be raised by the AO, because when the statute provides a procedure to be followed by the AO before passing a rectification order u/s.154 of the Act, then the AO can't brush aside such a requirement of law, and act on his own, whimsically, which action will be bad in the eyes of law being an arbitrary action which offends Article 14 of the Constitution of India. Further, we are of the view that principles of "audi alteram partem" (the right to be heard) lies at the very heart of procedural fairness. No one can be condemned without being given an opportunity to present one's case. Question about prejudice caused due to non-observance of this principle couldn't be raised when such principle is incorporated in statutory proceedings. In the present case, since subsection (3) of section 154 incorporates the principle of natural justice, the department cannot contend that there was no prejudice caused to the assessee.



ITA Nos.1494 to 1496/Chny/2024
(AYs 2016-17 to 2018-19)
M/s. ILJIN Automotive Pvt. Ltd.

:: 10 ::

10. Coming to the plea raised in the Remand Report that reduction of loss is as per section 155(4) of the Act, but the Ld.DR couldn't convince us as to how sub-section (4) of section 155 is applicable to the facts of the instant cases. Therefore, the same is rejected.

11. As noted in the cases in hand, there is per-se violation of natural justice incorporated in section 155(3) and therefore, we are inclined to set aside the impugned rectification order passed by the AO dated 19.02.2021 for AY 2016-17; order dated 04.11.2022 for AY 2017-18; and order dated 22.11.2022 for AY 2018-19. Thus, the additional grounds raised by the assessee for three (3) assessment years are allowed and the other grounds raised by the assessee are academic in nature and therefore not adjudicated.

12. In the result, appeals filed by the assessee are allowed.

Order pronounced on the 26th day of May, 2025, in Chennai.

Sd/-

(एस. आर. रघुनाथा)

(S.R.RAGHUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 26th May, 2025.

TLN



ITA Nos.1494 to 1496/Chny/2024
(AYs 2016-17 to 2018-19)
M/s. ILJIN Automotive Pvt. Ltd.

:: 11 ::

आदेश की प्रतिलिपि अग्रेषित / **Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF