IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER

ITA Nos.6678 & 6679/M/2012
Assessment Years: 2006-07 & 2008-09

M/s. Aristo Pharmaceuticals Pvt. Ltd., Mercantile Chambers, 3rd Floor, 12, J.N. Heredia Marg, Ballard Estate, Mumbai – 400 001 **PAN: AAACA 4495N**	Vs.	Asst. CIT 2(1), 5th Floor, Aayakar Bhavan, Mumbai - 400020
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Ajay Kumar Rastogi, A.R.
Revenue by : Shri Sanjay Singh, CIT DR

Date of Hearing : 23.07.2015
Date of Pronouncement : 06.11.2015

O R D E R

Per Sanjay Garg, Judicial Member:

The appeal above titled appeals relevant to assessment years 2006-07 & 2008-09 have been preferred by the assessee against the two different orders of even date 24.08.12 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)]. Since the facts and issues involved in both the appeals are identical, hence the same were heard together and are being disposed of with this common order. For the sake of convenience, the facts have been taken from ITA No.6678/M/2012 for A.Y. 2006-07.

ITA No.6678M/2012 for A.Y. 2006-07

2. The assessee has agitated the action of the Ld. CIT(A) in upholding the order of the Assessing Officer (hereinafter referred to as the AO) passed under section 154 of the Income Tax Act whereby the value of fringe benefit has

been determined at Rs.10,44,42,508/- as against Rs.9,43,04,283/- determined by the AO in the original assessment proceedings dated 22.11.10 under section 115WE(3) of the Act.

3. The brief facts of the case are that the assessee company is a pharmaceutical company involved in manufacturing of various pharmaceutical products. The assessee filed Fringe Benefit Tax (FBT) return on 30.10.06 declaring fringe benefits at Rs.5,41,64,140/- which included gift articles classified as sales promotion expenses amounting to Rs.3,37,94,082/-, fringe benefits upon which were valued at the rate of 20% amounting to Rs.67,58,816/-. The AO after scrutiny assessment proceedings accepted the amount as returned by the assessee. However, subsequently, the AO issued a notice under section 154/155 of the Act show causing the assessee as to why the expenditure on gift articles be not taxed at the rate of 50% of the value as per the provisions of section 115WB(2)(O) of the Income Tax Act. The assessee replied that since the expenditure incurred on gift articles was for business promotion, hence the fringe benefits were rightly assessed by the AO at the rate of 20% during the assessment proceedings. The AO, however, was not satisfied with the reply given by the assessee and recomputed the fringe benefits at the rate of 50% vide order dated 09.08.11 passed under section 154 of the Act holding that there was a mistake apparent on record in the original assessment order dated 25.11.08, wherein, the fringe benefits in relation to gift items have been wrongly assessed at the rate of 20% instead of 50%.

4. Being aggrieved, the assessee preferred appeal before the Ld. CIT(A), but the Ld. CIT(A) upheld the rectification order passed by the AO. The assessee, thus, has come in appeal before us.

5. At the outset, the Ld. A.R. of the assessee has submitted that the gift articles constitute the free samples of the pharmaceutical products and other

sale promotion gift articles carrying the name and logo of the company and did not fall under the definition of 'Gift' within the meaning of section 115WB(2)(O) but were covered by section 115WB(2)(D) and the same were accordingly valued at the rate of 20%. The return was scrutinized by the AO and after verifying the details, the AO had accepted the returned fringe benefits. The Ld. A.R. has further invited our attention to the original assessment order dated 25.11.08 wherein the AO has categorically mentioned that the representative of the assessee has attended and furnished the necessary explanation, information and details and thereafter the AO observed that after examination of the details of the amounts as considered/filed by the assessee under various heads of fringe benefits, with special reference to the amounts claimed as expenses under the same/similar expenses in the P&L Account for the year, the returned fringe benefits as per return of FBT u/s 115 WD(1) is accepted and assessed under section 115WE(3) accordingly. The Ld. A.R. has further submitted that the issue as to whether the gifts/free samples given by the assessee were to be considered as sales promotion expenses or as gifts was a debatable issue which required deep examination of facts and evidences. The necessary details were submitted before the AO which were accepted by the AO. The jurisdiction of the AO under section 154 was limited to the extent of rectification of a mistake apparent on record. He has relied upon the decision of the Hon'ble Supreme Court in the case of "T.S. Balaram ITO vs. Volkat Brothers" (1971) 82 ITR 50 in this respect.

The Ld. D.R., on the other hand, has relied upon the findings of the lower authorities.

6. We have considered the rival contentions. Admittedly, the issue as to at what value the fringe benefits have to be assessed in this case is on the face of it is a debatable issue. The assessee had given explanation that it were virtually the sale promotion expenses in the shape of free samples and the

articles covering the name and logo of the assessee company which were given to the distributors/doctors for the promotion of the products. The issue was examined by the AO and the FBT return filed by the assessee was accepted. A perusal of the assessment order dated 25.11.08 does not reveal any mistake apparent on record in the said order. The jurisdiction of the AO under section 154 of the Act is very limited to the extent of rectification of mistake apparent on record. However, we find that the AO in fact exercising his jurisdiction under section 154 has reviewed the original assessment order and has enhanced the assessable fringe benefits. It has been time and again held by the higher courts that the power under section 154 of the Act is a limited power to correct only those mistakes which are apparent on record. It is not a power of revision or review. A mistake is apparent on the face of record when it is patent, glaring, obvious or self evident. A mistake is apparent on the record if no external help either on fact or in law is required to detect such mistake. If the alleged mistakes require investigation into facts or determination of law or discussion of debatable points are involved or two opinions are possible on the issue then such pointed or mistakes cannot be said to be mistakes apparent on record, which can be rectified under section 154 of the Income Tax Act. Reliance in this respect can be placed on the decisions of the Hon'ble Supreme Court in the case of "T.S. Balaram ITO vs. Volkat Brothers" and of the Hon'ble Bombay High Court in the case of "Sidhramappa Andannappa Manvi vs. CIT" 21 ITR 333.

7. In view of the above, the enhancement of assessable fringe benefits by the AO in the garb of rectification of original assessment order cannot be held to be justified and the same is accordingly set aside.

ITA No.6679/M/2012 for A.Y. 2008-09

8. Since the facts and issues involved in this appeal are identical to the appeal of the assessee i.e. ITA No.6678/M/2012 for A.Y. 2006-07, hence

following the same view as taken above, this appeal is also decided in favour of the assessee.

9. In the result, both the appeals filed by the assessee are hereby allowed.

Order pronounced in the open court on 06.11.2015.

Sd/- **(G.S. Pannu)** **ACCOUNTANT MEMBER**	**Sd/-** **(Sanjay Garg)** **JUDICIAL MEMBER**

Mumbai, Dated: 06.11.2015.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.