

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "T", MUMBAI**

**BEFORE SHRI JASON P. BOAZ, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.3934/M/2016
Assessment Year: 2002-03**

ACIT 21(1), Room No.116, 1 st Floor, Piramal Chambers, Parel, Mumbai – 400012	Vs.	M/s. International Metro Civil Contractors, 16 th Floor, Tower II, Indiabull Finance Centre, S.B. Marg, Elphinstone (W), Mumbai – 400 013 PAN: AAAAI0325D
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Sunil K. Jha, A.R.
Revenue by : Ms. Dinkle Hariya, D.R.

Date of Hearing : 27.02.2017
Date of Pronouncement : 07.04.2017

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 14.03.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2002-03.

2. The Revenue is aggrieved by the action of the Ld. CIT(A) in deleting the addition made by the Assessing Officer (hereinafter referred to as the AO) in his rectification order passed under section 154 of the Income Tax Act. In this case the assessee had filed its original return of income for the year under consideration on 31.10.02 declaring nil income which was processed under section 143(1) of the Act. Subsequently, an order under section 154 was passed on 06.04.04 denying the claim of TDS to the assessee. The assessee went in appeal against the rectification order and got part relief.

3. Thereafter, the assessee's case was reopened under section 147 of the Act and a notice dated 12.04.04 under section 147 of the Act was issued. In response to the said notice, the assessee filed a return of income on 30.04.04 declaring loss of Rs.41,94,85,340/-. The said claim of loss was rejected by the AO vide his order dated 30.03.06 passed under section 143(3) read with section 147 of the Act. The AO vide said order had also made certain other disallowances.

4. Aggrieved by the said order, the assessee preferred appeal before the Ld. CIT(A). The Ld. CIT(A) allowed substantial relief to the assessee. While giving effect to the Ld. CIT(A)'s order, the AO reworked the loss allowable to the assessee at Rs.41,81,36,921/- vide his order dated 21.07.06. The department preferred appeal against the said order before the Tribunal. This Tribunal vide order dated 25.08.09 upheld the decision of the Ld. CIT(A). However, on the limited issue of allowability of software and hardware expenses, the Tribunal directed the AO to reexamine the assessee's claim while giving effect to the ITAT's order. The AO vide order dated 30.12.11 reworked the loss to Rs.41,71,10,403/-. Now vide impugned order passed under section 154 of the Act, the AO has asserted that the claim of loss of Rs.41,94,85,340/- was incorrectly worked out while giving effect to Ld. CIT(A)'s order dated 21.07.06. On this plea the AO has rectified the order giving effect to Tribunal's order dated 30.12.11 and has withdrawn the benefit of carried forward losses to the assessee. The AO has concluded that the return of income filed by the assessee, in response to the notice under section 148 of the Act, was invalid and hence losses should not be allowed. The Ld. CIT(A) has allowed the appeal against the said order of the AO holding that there was no justification in the rectification order passed by the AO under section 154 of the Act as it cannot be said that there was any mistake apparent on record in the said order. He accordingly directed the AO to delete the disallowance so made by the AO in proceedings under section 154 of the Act.

Being aggrieved by the above order of the Ld. CIT(A), the Revenue has come in appeal before us.

5. Admittedly, the issue has been settled up to the level of the Tribunal. There is no mistake in the order giving effect to the order of the Tribunal. Hence, there is no justification of rectifying the said order. The AO has tried to do reassessment proceedings in the garb of proceedings under section 154 of the Act. Moreover, the order giving effect to the Ld. CIT(A)'s order which the AO has sought to rectify is dated 30.03.06 and the present order passed under section 154 of the Act is dated 12.09.13 which is otherwise barred by limitation. We, therefore, do not find any merit in the appeal of the Revenue and the same is accordingly dismissed.

Order pronounced in the open court on .04.2017.

Sd/-
(Jason P. Boaz)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 07.04.2017.

* 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.