

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.5763/DEL/2019
Assessment Year 2012-13

South West Pinnacle Exploration Ltd., Plot No.6, Siddhartha House Sector-44, Gurgaon.	v.	ACIT, Circle-24(1), New Delhi.
TAN/PAN: AAKCS3608R		
(Appellant)		(Respondent)

Appellant by:	Shri I.P. Bansal, Adv.		
Respondent by:	Shri Sanjay Kumar Nargas, Sr.DR		
Date of hearing:	18	05	2022
Date of pronouncement:	26	05	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-VIII, New Delhi ('CIT(A)' in short) dated 12.06.2018 passed under Section 154 of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. As per the captioned appeal, the assessee has challenged;

- (i) the adjustment towards prior period expenditure of Rs.3,81,716/- by way of rectification resulting in increase in the assessed income.
- (ii) increase in the assessed income by Rs.3,32,350/- on

account of provision for leave encashment outstanding as on date of filing of return.

3. When the matter was called for hearing, the Id. counsel for the assessee submitted that none of the aforesaid adjustments are permissible under Section 154 of the Act. It was asserted that Section 154 operates to correct only mistake apparent from record and thus scope of rectification is very limited.

4. With the assistance of the Id. counsel for the assessee, we notice that the Assessing Officer has enhanced the assessed income on account of claim of prior period expenses of Rs.3,81,716/- by invoking Section 154 of the Act. In this context, we find palpable merit in the plea of the assessee that there is no bar *per se* for claim of prior period expenses as revenue expenditure in appropriate factual matrix in the light of the decision of the Hon'ble Supreme Court in the case of *CIT vs. Hero Cycles Pvt. Ltd. (1997) 94 Taxman 271 (SC)*. The Hon'ble Delhi High Court in the case of *CIT vs. Jagjit Industries Ltd. (2010) 194 Taxman 158 (Del.)* has held that the claim of prior period expenses is permissible in the given factual matrix. The Hon'ble Gujarat High Court in the case of *CIT vs. Indian Petrochemical Corporation Ltd. (2016) 74 taxmann.com 163 (Guj)* have expressed their view in favour of the assessee with respect to prior period expenses allowable as business expenditure in the relevant assessment year in the factual matrix. Therefore, on a broader reckoning, it is plain and simple that mere claim of prior period expenses in a relevant assessment year cannot be disallowed outright without examining the factual matrix. The Hon'ble High Court in the case of *Hero Cycle (supra)* has *inter alia* observed in paragraph 3 of the judgment that "*Rectification under section 154 of the Act can only be made when glaring mistake of fact or law has*

been committed by the officer passing the order becomes apparent from the record. Rectification is not possible if the question is debatable. Moreover, the point which was not examined on facts or in law cannot be dealt as mistake apparent on the record. The dispute raised a mixed question of fact and law.”

5. In the light of the legal position noted above, the action of the Assessing Officer is clearly without jurisdiction to invoke Section 154 of the Act with a view to engage in making adjustments on such debatable issues in an abstract manner. The action of the Assessing Officer is thus without sanction of law and requires to be reversed.

6. The second issue pertains to adjustment of Rs.3,32,350/- on account of provision for leave encashment under Section 154 of the Act. In this regard, it is the case of the assessee that at the time of passing of rectification order dated 12.06.2018, a view expressed by Hon'ble Calcutta High Court in the case of *Exide Industries Ltd. vs. Union of India (2007) 292 ITR 470 (Cal)* that Section 43B(f) governing allowability of leave encashment is not a good law and is to be struckdown being arbitrary and unconscionable was in vogue. It is contended that notwithstanding the fact that the Hon'ble Supreme Court in *Union of India vs. Exide Industries Ltd. (2020) 116 taxmann.com 378 (SC)* upheld the constitutional validity of clause (f) of Section 43B, the Assessing Officer at the time of rectification carried out, could not have taken a view inconsistent with judgment of the Calcutta High Court more particularly under the narrow scope of Section 154 of the Act.

7. We concur with the aforesaid contentions raised on behalf of the assessee without any demur. The Assessing Officer could not have enhanced the assessed income towards provision for leave encashment by way of rectification under Section 154 of the Act at

the relevant time contrary to judgment rendered by Hon'ble Calcutta High Court under Section 154 of the Act. The action of the Assessing Officer is thus reversed and position of the assessee is restored.

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

Order pronounced in the open Court on 26/05/2022.

Sd/-
[KUL BHARAT]
JUDICIAL MEMBER

DATED: /05/2022

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER