

आयकर अपीलिय अधिकरण
मुंबई पीठ “ए” मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एस रिफौर रहमान, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “A” BENCH
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER
आ.आ.सं. ७१२५/मुंबई/२०१८ (नि.वं. २०१३-१४)
ITA No.7125/MUM/2018 (A.Y.2013-14)
आ.आ.सं. ७१२६/मुंबई/२०१८ (नि.वं. २०१४-१५)
ITA No.7126/MUM/2018 (A.Y.2014-15)

M/s Ahmednagar Investments Pvt. Ltd.
11/12, Raghuvanshi Mill Compound,
Senapati Bapat Marg, Lower Parel
Mumbai-400 013

PAN No. AADCA9872E

..... अपीलार्थी/Appellant

बनाम Vs.

Deputy Commissioner of Income Tax, Circle- 5(3)
Room No.1906, 19th Floor,
Air India Building, Nariman Point,
Mumbai-400 021

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा / Appellant by : Shri Neelkanth Khandelwal

प्रतिवादी द्वारा / Respondent by : Shri Ashok Kumar Kardam, CIT-DR

सुनवाई की तिथि / Date of hearing : 16/03/2023

घोषणा की तिथि / Date of pronouncement : 31/05/2023

आदेश / ORDER

PER VIKAS AWASTHY, JM:

These two appeals by the assessee for assessment year 2013-14 and 2014-15, respectively are directed against the orders of Commissioner of Income Tax (Appeals)-53, Mumbai (hereinafter referred to as “the CIT(A)”) for the respective assessment years. Both the impugned orders are of even date i.e.



21.09.2018. These appeals germinate from the proceedings u/s 154 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

2. Since, the facts germane to both the appeals are identical. These appeals are taken up together for adjudication and are decided vide its common order. The appeals are taken up in seriatim of assessment year.

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3. Shri Neelkanth Khandelwal appearing on behalf of the assessee submits that the assessment u/s 143(3) of the Act, for AY 2013-14 was made by the Assessing Officer (AO) vide order dated 23.03.2016. Thereafter, the AO issued notice dated 26.10.2017 u/s 154 of the Act to rectify an alleged mistake i.e. inclusion of LTCG while computing Book Profits and Income Tax payable u/s 115JB of the Act. The AO vide order dated 15.11.2017 suo-moto rectified the alleged mistake and included income from Long Term Capital Gains in computing book profit, u/s 115JB of the Act. The total income of the assessee under normal provision was determined at Rs.14,972/-. Book profits under MAT provisions, after inclusion of Long Term Capital Gains exempt u/s 10(38) of the Act, were determined at Rs.21,12,52,540/-. Aggrieved against the order dated 15.11.2017 passed u/s 154 of the Act, the assessee filed appeal before the CIT(A). In the meantime, the AO passed another order u/s 154 of the Act, withdrawing the earlier order dated 15.11.2017 passed u/s 154 of the Act. The assessee filed an application before the CIT(A) dated 02.04.2018 to withdraw the appeal. The CIT(A) did not allow the assessee to withdraw appeal. Instead he first dismissed the appeal and thereafter enhanced the assessment. The Id. Authorised Representative (AR) submitted that the CIT(A) issued a notice of hearing of the appeal on 06.04.2018. Thereafter, the CIT(A) issued notice asking the assessee to furnish various documents on 18.04.2018. However,

none of the notice issued by the CIT(A) ever mentioned about enhancement. The assessee was informed about enhancement vide order sheet entry dated 24.08.2018.

The Id. AR of the assessee assailed the findings of CIT(A) by raising following arguments:

- (i) Once the CIT(A) had dismissed the appeal, the CIT(A) could not have enhanced the assessment in the said appeal.
- (ii) The CIT(A) in appeal arising out of rectification proceedings could not have made addition/enhancement on the grounds that are unrelated to the issue in rectification proceedings.
- (iii) The CIT(A) had no jurisdiction to examine the issues which were not part of the rectification order. Thus, the CIT(A) could not have exercised power of enhancement in respect of the said issues.
- (iv) The scope of proceedings u/s 154 of the Act is limited to rectification of mistake apparent from record. The CIT(A) has gone beyond his jurisdiction to exercise power of enhancement in appeal arising out of rectification proceedings.
- (v) The CIT(A) has erred in disallowing the claim of LTCG u/s 10(38) of the Act, when the details regarding the said claim were furnished by the assessee during assessment proceedings and examined by the AO during scrutiny assessment.

The Id. AR of the assessee prayed for quashing the impugned order and allowing appeal of the assessee.

4. Per contra, Shri Ashok Kumar Kardam representing the Department strongly supporting the impugned order submitted that the CIT(A) has powers co-terminus to that of the AO. The CIT(A) can examine any issue which the AO has failed to examine. The Id. Departmental Representative (DR) further submitted that the



order passed u/s 143(3) merge with the order u/s 154 of the Act. Therefore, the CIT(A) has rightly invoked powers of enhancement. In support of his submissions, he placed reliance on the following decisions:

- i. S. D. Traders vs. CIT, 267 Taxman 631;
- ii. Gurinder Mohan Singh Nindrajog vs. CIT, 348 ITR 170 (Delhi)

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. Insofar as sequence of events narrated by the Id. AR of the assessee, it is not disputed. The short issue for consideration before us as emanating from the facts and the submissions of the rival sides is: Whether in an appeal arising from order u/s 154 of the Act, the CIT(A) in exercise of its powers u/s 251(1)(a) of the Act, can enhance the assessment on a ground that is not a subject of rectification order?

6. The powers of the CIT(A) u/s 251 of the Act are plenary and co-extensive with that of the AO. The CIT(A) in exercise of powers u/s 251 of the Act in an appeal against the assessment order may confirm, reduce, enhance or annul the assessment. Thus, the CIT(A) u/s 251 (1) (a) of the Act can do whatever the AO can do. However, for enhancing the assessment, the CIT(A) has to issue show cause notice to the assessee.

7. Thus, a bare reading of provisions of section 251 and various judicial pronouncements, leaves no element of doubt about the CIT(A)'s power to enhance assessment but the jurisdiction of enhancement cannot be exercised in an unfettered manner. In the instant case, the AO suo-moto proposed to rectify alleged mistake u/s 154 of the Act. Vide order dated 15.11.2017 u/s 154 of the Act, the AO added Long Terms Capital Gains that were exempt u/s 10 (38) of the Act for computing Book Profits under MAT provisions. Against the said order u/s 154 of the Act, the assessee filed appeal before the CIT(A) raising following grounds:

“1. Learned AO, on the facts and circumstances of the case and in law, has erred in determining book profits of Rs.21,12,52,540/- under section 115JB of the Income Tax Act, 1961 as against Profit of Rs.81,90,605, as per audited annual accounts of the Appellant. The Appellant respectfully submits that AO ought to have appreciated that in calculating the Profit as per profit and loss account of Rs.81,90,605 the capital gains of Rs.21,15,65,969 was already considered. Further, the AO should have appreciated that 115JB does not allow for gains u/s 10(38) to be reduced from profit/loss as per audited profit and loss figure.”

Before the date of first hearing of appeal, the AO vide another order u/s 154 of the Act granted relief to the assessee as was sought in first appeal. The assessee vide application dated 02.04.2018 made a request to the CIT(A) to withdraw the appeal. The CIT(A) did not accord permission to withdraw appeal and asked the assessee to furnish further details viz: details of capital gains, scrip wise dividend income, Demat statement reflecting purchase and sale of shares, computation of book profit, computation of disallowance u/s 14A of the Act, etc. The assessee furnished the information/details as sought by the CIT(A) and reiterated the request for withdrawal of the appeal. The CIT(A) vide impugned order, first dismissed the appeal of assessee and thereafter, proceeded to enhance the assessment. The CIT(A) vide impugned order disallowed assessee's claim of business loss Rs.21,15,50,997/- stating it to be fictitious and bogus, the CIT(A) further added capital gains (claimed as exempt u/s 10(38) of the Act) Rs.21,15,65,969/-.

8. It is a well settled principle that the scope of rectification of mistake u/s 154 of the Act is limited. It is only the “mistake that is apparent from record” that can be rectified. In proceedings u/s 154 of the Act, the AO cannot make addition in respect of any new source of income. The Act has provided different canons viz reassessment u/s 147 of the Act and revision u/s 263 of the Act to take care of such errors and income escaping assessment. The Department has to invoke right provisions of the Act to ensure that income that is liable to be taxed does not escape tax net. The remedy provided to the Department under different sections



of the Act cannot be applied interchangeable. In other words, the provisions under different sections of the Act are not substitutes/alternate to each other. As we have observed earlier that powers of CIT(A) are co-terminus to that of the AO, the CIT(A) can do whatever AO can do. Similarly, the CIT(A) cannot do what the AO cannot do. The CIT(A) in the instant case, after having dismissed appeal of the assessee has exercised this power of enhancement u/s 251(1)(a) of the Act in respect of the issues that were not subject matter of rectification. The CIT(A) in appeal arising out of proceedings u/s 154 of the Act has no jurisdiction to travel beyond the issue that is subject matter of appeal. The scope u/s 154 of the Act is confined to rectification of any “mistake apparent from the records”. The entire assessment is not open before the CIT(A) as is in the case of appeal against order of assessment u/s 143(3) of the Act. The CIT(A) in exercise of power of enhancement has made addition in respect of business income by disallowing the losses holding them to be fictitious and bogus and has also made addition in respect of Long Term Capital Gains which otherwise are exempt under provision of section 10 (38) of the Act. The CIT(A) has gone beyond his jurisdiction while exercising power of enhancement in first appellate proceedings arising out of order u/s 154 of the Act.

9. We have also considered the decisions on which the Id. DR has placed reliance to buttress his submissions. We find the decisions are distinguishable on facts. In both the cases, the appeal was filed by the assessee against assessment order passed u/s 143(3) of the Act. There is no dispute on the powers of CIT(A) u/s 251(1)(a) of the Act to enhance assessment in an appeal against an order of assessment.

10. Ergo, the enhancement made by the CIT(A) vide impugned order is quashed. The impugned order is modified to that extent. Consequently, appeal of the assessee is allowed.



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11. Both the sides are unanimous in stating that the facts and grounds of appeal in AY 2014-15 are identical to AY 2013-14.
12. While deciding the appeal of assessee for AY 2013-14, we have given detailed findings setting aside the enhancement made by the CIT(A), the said findings would *mutatis mutandis* apply to the impugned assessment year, that is AY 2014-15.
13. In the result, appeal of the assessee is allowed.
14. **To sum up, appeals of the assessee for AY 2013-14 and 2014-15 are allowed.**

Order pronounced in the open court on Wednesday the 31st day of May 2023.

Sd/-

(S RIFAUR RAHMAN)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai,

दिनांक/Dated: 31/05/2023

Mahesh R. Sonavane

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER



प्रतिलिपी अग्रेषित Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/The Respondent.
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधी, आय. अपी. अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाईल/Guard file.

BY ORDER,

//True Copy//

(Dy. /Asst. Registrar)/
Sr. Private Secretary
ITAT, Mumbai