IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' SMC Bench, Hyderabad

Before Smt. P. Madhavi Devi, Judicial Member

ITA No	Assessee	Respondent	A.Y
1472/Hyd/2018	M/s. Shreeya Welfare Trust, Adilabad PAN:AADTS9909F	ITO Ward-1 Adilabad	2013-14
1473/Hyd/2018	-do-	-do-	2014-15
1474/Hyd/2018	-do-	-do-	2015-16
1475/Hyd/2018	Snehil Welfare Trust, Adilabad PAN:AADTS9910Q	-do-	2013-14
1476/Hyd/2018	-do-	-do-	2014-15
1477/Hyd/2018	-do-	-do-	2015-16
1478/Hyd/2018	Krishna Welfare Trust Adilabad PAN:AAATK7089K	-do-	2013-14
1479/Hyd/2018	-do-	-do-	2014-15
1480/Hyd/2018	-do-	-do-	2015-16
1481/Hyd/2018	Shrestha Welfare Trust, Adilabad PAN:AADTS9911R	-do-	2013-14
1482/Hyd/2018	-do-	-do-	2014-15
1483/Hyd/2018	-do-	-do-	2015-16
1484/Hyd/2018	Ronak Welfare Trust Adilabad PAN: AABTR1913N	-do-	2013-14
1485/Hyd/2018	-do-	-do-	2014-15
1486/Hyd/2018	-do-	-do-	2015-16

For Assessee : Shri A. Srinivas
For Revenue : Shri D.J.Prabhakar Anand

Date of Hearing: 12.03.2019
Date of Pronouncement: 15.03.2019

O R D E R

In all these appeals of the respective assessees, the issue is common and therefore, they were heard together and are disposed of by this common and consolidated order.

2. Brief facts of the case as taken from ITA No.1478/Hyd/2018 are that the assessee therein is a trust formed for the benefit of a sole beneficiary. It filed its returns of income for the relevant A.Ys and the returns were initially processed u/s 143(1) of the Act. Thereafter, the AO perused the record and observed that the assessee is an AOP and was required to be charged u/s 167B of the Act, whereas, the individual tax rates were wrongly charged. Observing that this is a mistake apparent from the record, he issued a notice u/s 154 of the Act on 4.12.2017 to rectify the said mistake.

3. The assessee filed its letter dated 27.12.2017 stating that since the date of formation, the AOP was regular in filing the returns of its income and the assessments were also completed considering the applicable new slab rates for individuals only and that there is no mistake apparent from record. The AO was however, not convinced with the assessee's contention and invoking the provisions of section 167B, he verified the records of the 3 Trustees and observed that one of the Members of the AOP, Shri Mahesh Kumar Khetan has taxable income of Rs.20,85,530/- and agricultural income of Rs.2,20,500/-, and thus or exceeded the maximum amount which is not chargeable to tax. Therefore, he held that in the case of the assessee, tax should be charged on its total income at the maximum marginal rate. He therefore, applied the maximum marginal rate and levied the tax accordingly. Aggrieved, the assessee preferred an appeal before the CIT (A) challenging both the validity of the proceedings u/s 154 and also on merits. The CIT (A) however, confirmed the order of the AO on both the grounds and the assessee is in second

appeal before this Tribunal raising the following grounds of appeal (for the sake of convenience, the grounds in ITA No.1478/Hyd/2018) are reproduced hereunder:

> *"1. The order of the Appellate Commissioner is contrary to law, facts & circumstances of the case.*
>
> *2. The Appellate Commissioner ought not to have upheld the order passed u/s.154 changing the tax rate from individual to maximum marginal rate u/s.167B.*
>
> *3. The Appellate Commissioner ought to have seen that the issue of changing the tax slab was debatable and thus the order could not be rectified u/s.154.*
>
> *4. The Appellate Commissioner ought not to have confirmed the order of the A.O in determining the tax rate u/s.167B ignoring the fact that the appellant is a specific trust for the benefit of an individual and the share being determinate.*
>
> *5. The Appellate Commissioner ought to have exercise his powers by determining the Appellant in the status of an individual, notwithstanding the fact that the Appellant itself has declared to be an AOP.*
>
> *6. Any other grounds which the appellant may urge either at or before the date of hearing".*

3. As regards the validity of the proceedings u/s 154, the learned Counsel for the assessee submitted that the assessee was formed on 23.01.2004 by the settler Smt. Vidya Devi Khetan for the benefit of a minor, Master Krishna Kumar Khetan, who was aged six months at the time of creation of the Trust. He submitted that the Trustees are only Managers of the Trust and are not the beneficiaries in any way. He submitted that the Trust, has all along been filing the returns as a Trust only but the status is mentioned in the return as AOP, since there is no other description available in the return. He submitted that since the beneficiary of the Trust is a single person, the AOP was being

taxed on the individual tax rates only all along and even for the relevant A.Ys, it was rightly taxed at the individual tax rates. He submitted that there was no mistake apparent from the record in the assessment order even for invoking the powers u/s 154 of the I.T. Act.

4. Further, he also drew our attention to the order u/s 154 of the Act to demonstrate that the issue as to whether the information which has to be gathered by the AO from the assessees record alone was considered by the AO. He submitted that the assessment records of the Trustees were considered by the AO to come to the conclusion that the income of one of the Trustees' Mr. Mahesh Kumar Khetan exceeded the maximum amount which is not chargeable to tax. Thus, according to him, this was a debatable issue and the decision had to be arrived at after a long drawn process and therefore, it cannot be stated to be a mistake apparent from the record which could be reviewed u/s 154 of the Act. In support of his contention he placed reliance upon the following case law:

i) *T.S. Balaram ITO vs. Volkart Bros. 82 ITR 50 (S.C)*
ii) *IInd Additional ITO vs. Atmala Nagaraju – 46 ITR (S.C)*
iii) *CIT vs. Keshri Metal P Ltd- 237 ITR 165 (S.C)*

5. Further, he submitted that the assessee being a Trust and beneficiary being a single person and the Trustees not being the beneficiaries, the AOP has to be taxed at individual tax rates only. In support of this contention, he placed reliance upon the following case law*:*

i) *CIT vs. Indira Balakrishna 39 ITR 546 (S.C)*

ii) COT vs. Marsons Beneficiary Trust – 188 ITR 224 (Bombay)

iii) CIT vs. Shree Krishna Bandar Trust 201 ITR 989 Calcutta

iv) DIT vs. Shardaben Bhagubhai Maftlal-247 ITR 1 Bombay

6. Thus, even on merits, according to him, the order u/s 154 is not sustainable.

7. The learned DR, on the other hand, supported the orders of the authorities below and submitted that the assessee itself has declared its status as an AOP in its return of income and the AO had noticed that the assessee was erroneously taxed at the individual tax rates and hence it was a mistake apparent from the record and the AO has correctly exercised the jurisdiction u/s 154 of the Act. Thus, he prayed for upholding the orders of the authorities below.

8. Having regard to the rival contentions and the material on record, we find that the assessee has been filing its returns of income from the A.Y 2007-08 and it has been taxed at individual tax rates only. The assessment years before us are 2013-14, 2014-15 and 2015-16. It is for the first time that the AO has treated the assessee as an AOP and held that it is being taxed at individual tax rates, whereas it should be taxed u/s 167B of the Act. Therefore, in order to apply the provisions of section 167B(2), he invoked the provisions of section 154 of the Act.

9. At the outset, I consider it necessary to examine whether the said provision is applicable to the assessees before us. For the sake of convenience and ready reference, the relevant provision is reproduced hereunder:

> ***"Section 167B(2) in The Income- Tax Act, 1995***
> *(2) Where, in the case of an association of persons or body of individuals as aforesaid not being a case falling under sub- section (1)*
>
> *(i) the total income of any member thereof for the previous year (excluding his share from such association or body) exceeds the maximum amount which is not chargeable to tax in the case of that member under the Finance Act of the relevant year, tax shall be charged on the total income of the association or body at the maximum marginal rate;*
>
> *(ii) any member or members thereof is or are chargeable to tax at a rate or rates which is or are higher than the maximum marginal rate, tax shall be charged on that portion or portions of the total income of the association or body which is or are relatable to the share or shares of such member or members at such higher rate or rates, as the case may be, and the balance of the total income of the association or body shall be taxed at the maximum marginal rate. Explanation.- For the purposes of this section, the individual shares of the members of an association of persons or body of individuals in the whole or any part of the income of such association or body shall be deemed to be indeterminate or unknown if such shares (in relation to the whole or any part of such income) are indeterminate or unknown on the date of formation of such association or body or at any time thereafter.] E.- Executors"*

10. From the literal reading of clause (i) and the words within the brackets therein, it is seen that the Member of the AOP should have a share in the income of the AOP and such share should be excluded from his income to examine whether his income exceeds the maximum amount which is not chargeable to tax in the relevant year. Therefore, I am of the view that the provisions of section 167B are not applicable automatically, but can be applied only after examination of facts as to whether any of the Member of the AOP has income which exceeds the maximum amount which is not chargeable to tax in the relevant years. Therefore, it is not a mistake apparent from the record which can be rectified u/s 154 of the Act. The AO has to examine the facts and also has to verify the income of each of the Trustees. The

learned Counsel for the assessee had stated that the return of income of Mr. Mahesh Kumar Khetan was not part of the assessment records of the assessee, but the same is referred to by the AO in the order u/s 154. Therefore, the AO had clearly verified the record of Mr. Mahesh Kumar Khetan to come to the conclusion that his income exceeded the maximum limit of the income which is not chargeable to tax. The learned DR had placed reliance upon the judgment of the Hon'ble Supreme Court in the case of CIT vs. Keshri Metal (P) Ltd (Supra) wherein the Hon'ble Supreme Court had held that reference to a document outside the control and law is impermissible while applying the provisions of section 154 of the Act. The relevant paragraph is reproduced hereunder for ready reference:

> *"6.We have heard learned Counsel. We do not agree that the question raises a pure question of fact; to that extent, the High Court was in error. But it was not in error in coming to the conclusion that there was no occasion for rectification. Under the provisions of Section 154 there has to be a mistake apparent from the record. In other words, a look at the record must show there has been an error, and that error may be rectified. Learned counsel for the revenue has not been able to satisfy us that it shows any apparent error upon the record. Reference to document outside the record and the law impermissible when applying the provision of section 154".*

11. The Hon'ble Supreme Court in the case of Volkart Brothers (cited Supra) has explained the scope of section 154 of the Act as under:

> *"From what has been said above, it is clear that the question whether S. 17(1) of the Indian Income-tax Act, 1922 was applicable to the case of the first respondent is not free from doubt. Therefore, the Income-tax Officer was not justified in thinking that on that question there can be no two opinions. It was not open to the Income-tax Officer to go into the true scope of the relevant provisions of the Act in a proceeding under S. 154 of the Income-tax Act, 1961. A mistake apparent on the record must be an obvious and patent mistake and*

not ,something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions. As seen earlier, the High Court of Bombay opined that the original assessments were in accordance with law though in our opinion the High Court was not justified in going into that question. In Satyanarayan Laxminarayan Hegde and ors. v. Millikarjun Bhavanappa Tirumale(1) this Court while Spelling out the scope of the power of a High Court under Art. 226 of the Constitution ruled that an error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions cannot be said to be an error apparent on the face of the record. A decision on a debatable point of law is not a mistake apparent from the record-see Sidhamappa v.. Commissioner- of Income-tax, Bombay(2). The power of the officers mentioned in S. 154 of the Income-tax Act, 1961 to correct "any mistake apparent from the record" is (1) [1960] 1 S.C.R. 890.

(2) 21 I.T.R. 333.

undoubtedly not more than that of the High Court to entertain a writ petition on the basis of an "error apparent on the face of the record". In this case it is not necessary for us to spell out the distinction between the expressions 66 error apparent on the face of the record" and "mistake apparent from the record". But suffice it to say that the Income tax Officer was wholly wrong in holding that there was a mistake apparent from the record of the assessments of the first respondent.

For the reasons mentioned above we dismiss this appeal with costs".

12. Therefore, I am satisfied that the AO had exceeded his jurisdiction in exercising his powers u/s 154 of the Act. It was clearly a debatable issue and as held by the Hon'ble Supreme Court in the case of T.S. Balaram vs. Volkart Bros (Supra) a mistake apparent from the record must be patent mistake on which there can be no two opinions. Therefore, according to me, the initiation and exercise of powers u/s 154 of the Act by the AO is not sustainable. Even on merits, we find that the Trustees are not the beneficiaries in any way and there is a sole beneficiary who has no other income but the income generated by the Trust. It is also submitted by the learned Counsel for the assessee that

the assessee Trust is not carrying on any business but is only managing the income from other sources for the benefit of the beneficiary. Therefore, even on merits, I am not inclined to accept the order u/s 154 of the Act.

13. In the result, appeals filed by the respective assessees are allowed.

Order pronounced in the Open Court on 15th March, 2019.

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated March, 2019.

Vinodan/sps

Copy to:

1 M/s. Shreya Welfare Trust, D.No.6-7-72/1/A Bhoktapur Street Adilabad 504002
2 Snehil Welfare Trust, D.No.6-7-72/1/A Bhoktapur Street Adilabad 504002
3 Krishna Welfare Trust, D.No.6-7-72/1/A Bhoktapur Street Adilabad 504002
4 Shrestha Welfare Trust, D.No.6-7-72/1/A Bhoktapur Street Adilabad 504002
5 Ronak Welfare Trust, D.No.6-7-72/1/A Bhoktapur Street Adilabad 504002
6 ITO Ward -1 Adilabad
7 CIT (A)-5, Hyderabad
8 Pr. CIT – 5 Hyderabad
9 The DR, ITAT Hyderabad
1 Guard File

By Order