

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

**ITA No.248/Hyd/2019  
Assessment Year: 2012-13**

**&**

**S.A. No.153/Hyd/2019  
(Arising out of ITA No.248/Hyd/2019)  
Assessment Year: 2012-13**

**Madhucon Sugar and Vs. ACIT,  
Power Industries Ltd, Circle-1,  
Hyderabad. Khammam  
PAN: AADCM 3426 A**

(Appellant)

(Respondent)

Assessee by: Sri P. Murali Mohan Rao  
Revenue by: Sri Rajeev Benjwal, DR

Date of hearing: 25/06/2019  
Date of pronouncement: 12/07/2019

**ORDER**

**PER A. MOHAN ALANKAMONY, AM.:**

This appeal is filed by the assessee against the order of the Ld. CIT(A)-7, Hyderabad dated 18/01/2019 in Appeal No.0108/CIT(A)-7/2017-18 passed U/s.154 and U/s 250(6) of the Act for the Asst. Year 2012-13.

2. In this appeal, assessee has raised 10 grounds. However, the crux of the issue is that the assessee is aggrieved by the order of the Ld. CIT(A) who has confirmed the order of the Ld. AO passed U/s. 154 of

the Act rectifying the mistake committed in the original Order of the Ld.AO passed U/s. 143(3) of the Act as the issue was debatable and cannot be construed as mistake apparent from the record that has crept into the order of the Ld. AO.

3. Brief facts of the case are that the assessee-company filed its return of income for the A.Y. 2012-13 on 29/09/2012 declaring total loss of Rs. 3,31,84,689/-. Thereafter assessment U/s. 143(3) of the Act was completed on 25/2/2015. Subsequently, the Ld. AO passed order u/s 154 of the Act on 10/10/2017 rectifying the apparent mistake committed in the Original assessment Order passed U/s. 143(3) of the Act as he was of the view that the profit derived from sale of old machinery amounting to Rs. 91,78,920/- was erroneously entered in the balance sheet directly instead of routing it through P & L Account. The Ld. AO further opined that such treatment in the statement of affairs of the assessee company by excluding the profit derived from the sale of old machinery amounting to Rs. 91,78,920/- while computing the MAT U/s. 115JB of the Act is erroneous and detrimental to the interest of Revenue, hence it is required to recompute the profit of the assessee company by including the profit derived from the sale of old machinery amounting to Rs. 91,78,920/-. On appeal, the Ld. CIT (A) upheld the order of the Ld. AO by observing as under: -

*“5.....By plain reading of the explanation 1 to clauses i to viii of subsection 2 of sec. 115JB of the I.T. Act, does not provide for claim of deduction towards sale of old machinery from the net profit to arrive at book profit. This amount does not fall in any of the items referred in*

*Explanation 1 to clauses I to viii of sub-sec. 2 of sec. 115JB of the I.T. Act. Since the mistake did occur at the time of assessment U/s. 143(3) of the Act and such mistake is apparent from record, the Assessing Officer is legally correct in passing the rectification order on 10-10-2017. All the grounds raised by the appellant are rejected.”*

4. At the outset, the Ld. AR submitted that though there may be merit in the finding of the Ld. CIT (A) the issue is debatable and is held in favour of the assessee as well as of the Revenue by the various decisions of higher Judiciary. Hence, it is not a case where there is an apparent mistake in the order of the Ld. AO which is required to be rectified but it is a case of debatable issue. It was therefore submitted that what the Ld. AO ought to have done by invoking the provisions of section 147 and 148 of the Act cannot be carried out by invoking the provisions of section 154 of the Act. Therefore, the order of the Ld. AO U/s. 154 of the Act is erroneous. Accordingly, the order of the Ld. CIT(A) confirming the order of the Ld. AO is devoid of merits. The Ld. DR on the other hand argued in support of the orders of the Ld. Revenue Authorities.

5. We have heard the rival submissions and carefully perused the materials on record. From the facts of the case it is apparent that the various Higher Judiciaries have taken divergent view on the issue where certain Capital loss are directly entered in the balance sheet without routing it through P & L Account. Though the Companies Act, 1956 mandates any Profits and Loss to be routed through P & L Account, the issue with respect to computation of MAT in such circumstance as admitted by both the parties is not settled by the decision of the Hon'ble

Apex Court. In this situation it cannot be said that there is an apparent mistake in the original order of the Ld. AO passed U/s. 143(3) of the Act which is required to be rectified. In this circumstance the Ld. AO has jurisdiction only to reopen the case of the assessee U/s. 147 & 148 of the Act and pass speaking order after hearing both sides. In the case of the assessee the Ld. AO has invoked the provisions of section 154 of the Act and passed Order without affording the assessee an opportunity of being heard which is erroneous. Therefore, the Ld. CIT (A) has also erred in confirming the order of the Ld. AO passed U/s. 154 of the Act. Hence, we hereby set-aside the order of the Ld. CIT (A) and further quash the order of the Ld. AO who had erroneously invoked the provisions of section 154 of the Act.

6. Since we have decided the appeal of the assessee in its favour by setting aside the order of the Ld. CIT (A) and quashing the order of the Ld. AO, the Stay Application filed by the assessee does not survive.

7. In the result, appeal of the assessee is allowed and the stay application of the assessee is dismissed as not maintainable.

Pronounced in the open Court on 12<sup>th</sup> July, 2019.

**Sd/-**  
**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(A. MOHAN ALANKAMONY)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 12<sup>th</sup> July, 2019

**OKK**

## Copy to:-

- 1) Madhucon Sugar and Power Industries Ltd., C/o. P. Murali & Co. Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad – 082.
- 2) ACIT, Circle-1, Khammam.
- 3) The CIT(A)-7, Hyderabad
- 4) The Pr. CIT-7, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File