<u>आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ</u>

IN THE INCOME TAX APPELLATE TRIBUNAL,
'' A'' BENCH, AHMEDABAD

BEFORE Ms SUCHITRA KAMBLE, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ **ITA No. 339/AHD/2021**

निर्धारण वर्ष/Asstt. Year: 2015-2016

M/s.Shilp Gravures Ltd., 101, Kashi Parekh Complex, B/h. Bhagwati Chambers, CG Road, Ahmedabad-380009. **PAN: AADCS0868G**	Vs.	The D.C.I.T, CPC, Banglauru.

(Applicant)		**(Respondent)**

Assessee by	:	Shri S.N Divatia with Shri Samir Vora, ARs
Revenue by	:	Ms Saumya Pandey Jain, Sr. DR

सुनवाई की तारीख/**Date of Hearing : 07/02/2024**
घोषणा की तारीख /**Date of Pronouncement: 06/05/2024**

<u>आदेश/O R D E R</u>

<u>PER WASEEM AHMED, ACCOUNTANT MEMBER:</u>

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals), Ahmedabad, arising in the matter of assessment order passed under s. 154 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2015-2016.

2. The solitary grievance of the assessee is that the learned CIT(A) erred in confirming the order of the AO by rejecting the rectification application of the assessee filed under section 154 of the Act.

3. The necessary facts as arising from the order of the authorities below are that the assessee in the present case, a limited company, is engaged in the business of manufacturing and job work in electronically engraved copper rollers, lasers and chemical etching used in printing and packing industry. The AO while processing the return under section 143(1) of the Act has made the following adjustments to the total income of the assessee:

i. Adjustment of depreciation for ₹ 41,45,940/- on account of mismatch in the amount of depreciation shown in the books of accounts claimed as per The Companies Act viz a viz the addition of the same in the return of income. As such, the AO found that the assessee has claimed depreciation in the books of accounts under The Companies Act at ₹ 6,65,43,786/- which was to be added back in the business income under the Act, but the assessee has added back for ₹ 6,23,97,846/- resulting understatement of income of the assessee by ₹ 41,45,940/- only.

ii. Claim of the additional depreciation by the assessee amounting to ₹ 62,26,779/- in the income tax return which was not allowed in the return processed under section 143(1) of the Act.

3.1 Thus, the return of the assessee was processed by making the addition of the above stated items aggregating to ₹ 1,03,72,719/- to the total income of the assessee.

3.2 The assessee moved an application under section 154 of the Act dated 11 January 2019 and on other dates stating that it has been allowed lesser depreciation by ₹ 1,03,72,719/- for which it was entitled.

3.3 The assessee further vide application dated 12th of February 2019 under section 154 of the Act elaborated the amount of less than depreciation allowed to it on account of mismatch in the figure by the ₹ 41,45,940/- and additional depreciation, 50% of which was claimed & allowed in the earlier.

3.4 Besides the above the assessee also made a fresh claim by claiming deduction of the gratuity amounting to ₹ 21,09,538/- on payment basis which was according to the assessee omitted to be claimed as deduction in the original return of income.

4. However, the AO vide order dated 12 May 2020 rejected the rectification application filed by the assessee on the reasoning that the scope of section 154 of the Act is limited to the extent of the apparent mistake. As per the AO, the mistakes pointed out by the assessee in its application were not representing the apparent mistakes.

5. On appeal to the learned CIT(A), the finding of the AO was confirmed on the same reasoning that there is no mistake apparent from record without going into the argument raised by the assessee in the application filed under section 154 of the Act.

6. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

7. The learned AR before us filed a paper book running from pages 1 to 71 along with the printed financial statement of the assessee running from pages 1 to 101 and contended that the AO under wrong assumption of facts concluded that the assessee has claimed depreciation in the books of accounts at ₹ 6,65,43,786/- whereas the actual amount of depreciation claimed in the profit and accounts stands at ₹ 6,23,97,846/- only. The learned AR in support of his contention drew our

attention on the printed financial statement of the assessee, relevant page number 47 and 56 of the paper-book, wherein profit loss account and fixed assets schedule was available.

7.1 Likewise, the learned AR contended that the additional depreciation was claimed in immediate previous assessment year to the tune of 50% only on the reasoning that the relevant plant & machinery was put to use for less than 180 days in the immediate previous assessment year. Therefore, the assessee has claimed balance amount additional depreciation in the year under consideration for which the assessee is very much entitled. As per the learner AR additional depreciation claimed in the earlier assessment year has not been disturbed by the revenue and therefore the same should be allowed to the assessee. The assessee has also made such claim representing additional depreciation in the income tax return.

8. With respect to the gratuity payment, the learner AR submitted that the assessee should not be deprived of the benefit for which he is entitled under the provisions of the Act. As per the learned AR, the assessee omitted to make a genuine claim of deduction of gratuity on payment basis. As per learned AR the assessee, though omitted to claim the benefit of gratuity amount on payment basis but the same claim can be raised before the authorities. The learned AR also refer to the circular issued by the CBDT bearing number 14(XL-35 dt. 11-04-1955 stating that the department must not take the advantages of ignorance of the assessee to collect more tax than what is legally due under the provisions of law.

9. On the contrary, the ld. DR vehemently contended that provision of section 154 is limited to the correction of mistake which is an apparent mistake from record and not the mistake required to be established by long drawn argument. As per the learned DR there is no apparent mistake in the intimation generated under section 143(1) of the Act based on which the assessee's return of income can be verified or

allowed deduction in the proceedings under section 154 of the Act. The ld. DR vehemently supported the order of the authorities below.

10. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the impugned case involves the disputes as detailed below:

i. Mismatch in the amount of depreciation discussed above ₹ 41,45,940/-
ii. Claim of additional depreciation of ₹ 62,26,779/- as discussed above,
iii. Additional deduction of gratuity amount on payment basis which was not claimed in the original income tax return.

10.1 Regarding the mismatch in the amount of depreciation of ₹ 41,45,940/-, we find that the assessee while computing the business income as per the provision of Act added back the depreciation amount as per profit and loss for ₹ 6,23,97,846/- only whereas as per revenue the amount of deprecation claimed under profit and loss account was at Rs. 6,65,43,786/- and therefore, this amount should be added back to net profit. The assessee before the revenue authority and before us contended that deprecation in books of account is of ₹ 6,23,97,846/- only which was added back while computing business income as per the Act. This amount can be verified from audited financial statement of the assessee available on record, more particularly from page number 47 and 56 of the financial statements where the profit and loss account and fixed asset schedule is available. We have also perused the ITR of the assessee filed in form ITR-6 and note that in Profit and loss account reported in ITR-6 in schedule "Part A- P&L the assessee at column number 44 shown depreciation amount at ₹ 6,65,43,786/-only. Hence, there is mismatch in the amount of depreciation as per books reported at 2 different places which not been verified by the authority. Therefore, in our considered view that there is mismatch in the amount of depreciation which needs to be looked into and same needs to be rectified after verification.

10.2 Regarding the additional depreciation of ₹ 62,26,779/-, we find that the assessee before the revenue authority and before us stated that in the immediate previous assessment year, it acquired plant & Machinery which was eligible for additional depreciation. However, the plant & machinery in previous assessment year was put to use for less than 180 days therefore the assessee claimed only 50% of such additional claim in the immediate previous year and remaining 50% claimed in the year under consideration. The claim made in previous assessment year for 50% amount has been allowed therefore remaining 50% should also be allowed in the year under consideration. The lower authority without verifying the veracity of assessee's claim rejected the rectification application 154 of the Act. In our considered opinion, the claim of the assessee needs to be verified as it appears to us there is a mistake in the order of the information generated under section 143(1) of the Act and needs to be rectified under the provisions of section 154 of the Act.

10.3 Moreover, the CPC itself gives power to the assessee to move the rectification application under section 154 of the Act if the assessee is not satisfied with the information generated under section 143(1) of the Act. Such facts can be verified from the communication made by CPC place on page 44 of the paper book, relevant extract is reproduced as under:

> *If you are not satisfied with the intimation u/s.143(1), you may seek rectification as per section 154 by filing an online application for rectification, which details are available on website http.//incometaxindiaefiling.gov.in with your User ID and Password and choosing Rectification Request under My Account section.*

10.4 Regarding the additional claim made by the assessee for the gratuity on payment basis, admittedly such claim was not made in the return of income and therefore the AO has no power to entertain such request of the assessee without having filed the revised return of income in pursuance to the judgement of Hon'ble Supreme Court in the case of Goetze (India) Ltd vs. CIT reported in 284 ITR 323. However, the assessee has every right to make such claim before the higher forum which has also been held by the Hon'ble supreme court in the case of Goetze (India)

Ltd (supra). Now question arises, can the assessee make fresh claim in application filed under section 154 of the Act. In this regard, we find support and guidance from the judgement of Hon'ble Bombay High Court in the case of Promod R Aggarwal vs. PCIT reported in 156 taxman.com 126. In the said case the assessee sold some immovable property and offered capital in the return without claiming index cost of improvement. The return was selected for scrutiny and addition under section 50C of the Act was made. Subsequently the assessee filed rectification application for allowing the index cost of improvement omitted to claim in original return of income and such claim was allowed in case of other co-vendor. The rectification application under section 154 of the Act was rejected by the AO and subsequently by the ld. PCIT by holding that such claim was not made in return of income and first time made in application under 154 of the Act but same is not a rectifiable mistake. In this background the Hon'ble Bombay high court held as under:

> *The proceedings under section 264 are intended to meet a situation faced by an aggrieved assessee, who is unable to approach the Appellate Authorities for relief and has no other alternate remedy available under the Act. The Commissioner is bound to apply his mind to the question whether the assessee was taxable on that income and his powers are not limited to correct the error committed by the subordinate authorities but could even be exercised where errors are committed by the assessee. It would even cover situation where the assessee because of an error has not put forth legitimate claim at the time of filing the return and the error is subsequently discovered and is raised for the first time in an application under section 264. [Para 11]*
> *In the case of Asmita A. Damale v. CIT [Writ Petition No. 676 of 2014, dated 9-5-2014] the Court had held that the Commissioner while exercising revisionary powers under section 264 has to ensure that there is relief provided to assessee where the law permits the same. [Para 12]*

10.5 In view of the above and considering the facts in totality, the claim made by the assessee in the application filed under section 154 of the Act is required to be looked into by the AO on merit as per the provisions of law. Hence, the grounds of appeal of the assessee are allowed for the statistical purposes.

11. In the result the appeal filed by the assessee is allowed for the statistical purposes.

Order pronounced in the Court on 06/05/2024 at Ahmedabad.

Sd/-	Sd/-
(SUCHITRA KAMBLE)	**(WASEEM AHMED)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad; Dated 06/05/2024

आदेश की प्रतिलिपि ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad