IN THE INCOME TAX APPELLATE TRIBUNAL "F", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM
&
SHRI AMARJIT SINGH, JM

ITA No.3828/Mum/2015
(**Assessment Year :2005-06**)

ITO WD 1(1)(1) 534/579 Aayakar Bhavan M.K.Road, Mumbai – 400 020	Vs.	M/s. BFIL Finance Ltd., Eucharistic Congress Building No.1 5 Convent Street, Colaba, Mumbai – 400 039
PAN/GIR No.		**AAACI3193H**
Appellant)	..	**Respondent**)

CO No.15/Mum/2017
(**Assessment Year :2005-06**)

M/s. BFIL Finance Ltd., Eucharistic Congress Building No.1 5 Convent Stret, Colaba, Mumbai – 400 039	Vs.	ITO WD 1(1)(1) 534/579 Aayakar Bhavan M.K.Road, Mumbai – 400 020
PAN/GIR No. AAACI3193H		
Appellant)	..	**Respondent**)

Revenue by	Ms. Pooja Swaroop
Assessee by	Shri K.K.Ved
Date of Hearing	**21/11/2017**
Date of Pronouncement	**27/11/2017**

आदेश / O R D E R

***PER R.C.SHARMA (A.M)*:**

This is an appeal filed by the Revenue and Cross Objection by the assessee against the order of CIT(A)-2, Mumbai dated 27/02/2015 for A.Y.2005-06 in the matter of order passed u/s.154 of the IT Act.

2. In this appeal, revenue is aggrieved by the action of the CIT(A) in holding that order passed by the AO u/s.154 was time barred.

3. Rival contentions have been heard and record perused.

4. Facts in brief are that the assessee company e-filed its return of income on 26.10.2005 for A.Y. 2005-06 declaring NIL income under normal provision of IT Act, 1961. An assessment order u/s 143(3) of the Income-Tax Act, 1961 was passed on 28.12.2007 after making following additions/disallowances:

(i) Interest paid for delayed payment	24,08,118/-
(ii) Depreciation on buildings	46,421/-
(iii) Depreciation on Plant and Machinery	33,24,300/-
(iv) Disallowance u/s. 14A	52,000/-
(v) Disallowance of telephone deposits	91,500/-

5. The assessee had preferred a rectification application dated 24.01.2008 pointing out the errors apparent on record in the assessment order. Subsequently, an order dated 26.03.2008 was passed u/s. 154 of the IT. Act rectifying some of the error pointed out by the assessee. Further the appellant had preferred an appeal against the assessment order. The CIT(A) decided the appeal partially in favour of the assessee vide order dated 19.10.2010. The AO vide an order dated 02.02.2011 gave effect to the order passed by the CIT(A). Thereafter, the AO passed an order u/s. 154 dated. 20.01.2014.

6. Aggrieved by the A.O.'s rectification order, the assessee had filed an appeal before CIT(A).

7. By the impugned order, CIT(A) held that order passed by the AO u/s.154 was time barred. Precise observation of CIT(A) was as under:-

> *"3.2. The facts of the case, stand taken by the AO and the submission made by the appellant are considered. On a perusal of the order appealed against, it is clear that the AO has referred to the order giving effect to the CIT(A)?s order as the order that is sought to be rectified u/s. 154 of the Act. The issue examined and rectified in the rectification order dated 20.1.2014 is the issue of applicability of book profits tax u/s. 115JB of the Act. It appears that the AO has not computed the income of the appellant u/s, 115JB of the Act, while passing the order u/s. 143(3) of the Act. Such an omission appears to have been identified at a subsequent date and therefore, some corrective action was attempted. However, such a corrective j action has to be with reference to the assessment order wherein the AO has not I computed the tax liability of the appellant u/s. 115JB of the Act. As regards the issue sought to be rectified, that is, the liability of the appellant u/s, 115JB of the Act is concerned, there is no support available in the CIT(A)'s order and therefore, the order giving effect to the CIT(A)'s order cannot provide any basis or reference for passing an order u/s. 154 of the Act and determine the liability of the appellant u/s. 115JB of the Act. It is evident from the facts of the case that any rectification order involving the issue of determination of the liability of the appellant u/s. 115JB of the Act, ought to have been passed within four years from the end of the financial year in which the order sought to be amended was passed. In this case, the relevant order is the order u/s. 143(3) of the Act, which was dated 28.12.2007 and therefore, the period of limitation has to be reckoned from the end of the financial year 2007-08. It is evident that the validity of the jurisdiction u/s. 154 of the Act, for determining the tax liability u/s. 115JB of the Act, has expired on 31.03.2012 and therefore it is hereby held that the AO did not have the jurisdiction to pass rectification order on 20.01.2014. Since the order passed by the AO is found to be beyond the period of limitation, imposed u/s.154(7) of the Act, the order dated 20.1.2014 passed u/s.154 of the Act is hereby anulled"*

8. Against the above order of CIT(A), Revenue is in further appeal before us.

9. We have considered rival contentions and carefully gone through the orders of the authorities below and found from record that AO has rectified the order passed by him on 28/12/2007. While framing the assessment order, AO has not computed income of assessee u/s.115JB. This omission was identified at a subsequent date accordingly AO has passed the order to rectify the same. The impugned order so passed by the AO was dated 21/01/2014, which is much beyond the limitation period to be reckoned from the end of the Financial Year 2007-08. Even though AO has mentioned in his order that the order is passed to give the effect to the order of CIT(A)'s order. However, in fact the rectification has been made in respect of mistake committed by him in the order passed u/s.143(3) dated 28/15/2007. Accordingly, we do not find any infirmity in the order of CIT(A) for holding that the order passed u/s.154 was time barred under the provisions of Section 154(7) of the Act. The issue under consideration is also squarely covered by the decision of Bombay High Court in case of Sakseria Cotton Mills Ltd., 124 ITR 570 wherein it was held that rectification of mistake- period of limitation u/s.154(7) will apply from the date of original order of the ITO and not from the date of ITO's order giving effect to the AAC's order in respect of points not the subject matter of the order u/s.154.

10. In view of the above, we do not find any infirmity in the order of CIT(A). The cross objection has been filed in support of CIT(A)'s order and since we have already dismissed revenue's appeal, cross objection has become academic.

11. In the result, the appeal of Revenue as well as Cross Objection filed by the assessee are dismissed.

Order pronounced in the open court on this 27/11/2017

Sd/-	**Sd/-**
(AMARJIT SINGH)	**(R.C.SHARMA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai; Dated 27/11/2017
Karuna Sr.PS
Copy of the Order forwarded to :
1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai