

Scope of jurisdiction in rectification proceedings u/s 154 - correctness of upward adjustment on account of 'contingent liabilities on the basis of Tax Audit Report for the purposes of drawing intimation under section 143(1) r.w.s 154 -

ITAT DELHI :-FASHION DESIGN COUNCIL OF INDIA VERSUS ACIT CIRCLE (EXEMP) 1 (1) NEW DELHI, ITA No. 2786/Del/2023

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Observation We have carefully considered the rival submissions and perused the material available on record. The correctness of upward adjustment on account of 'contingent liabilities on the basis of Tax Audit Report for the purposes of drawing intimation under section 143(1) r.w.s 154 of the Act is in controversy. It is the case of the assessee that the 'contingent liabilities' disallowed as inadmissible expenditure by the CPC under section 143(1) were never provided for in the Profit & Loss Account and was never claimed as expenditure for the purposes of determining the taxable income returned by the assessee. The adjustment has been carried out by the CPC-AO solely on the basis of incorrect reporting in "Tax Audit Report" where the Tax Auditor has committed inadvertent error and wrongly reported the contingent liabilities as expenses actually debited to Profit & Loss account which is untrue and inconsistent with the audited financial statement. It is thus the case of the assessee that an expenditure cannot be disallowed where it has not been claimed at the first instance while determining the taxable income. On realization of apparent human error, the confirmation from the Tax Auditor to this effect has been obtained and placed before the Tribunal in the course of hearing.

Section 154 of the Act provides for rectification of any mistake apparent from record. Hence, the scope and ambit of Section 154 is quite narrow

Patent, manifest and self-evident error is one which does not require elaborate discussion of evidence or arguments to establish it. An error cannot be said to be apparent on the face of record if one has to travel beyond the record to see whether the action is correct or not. An error apparent from record means an error which strikes one on mere looking and does not need any serious justification. It is trite that the power of rectification can be exercised only when the mistake which is sought to be rectified is an obvious and patent mistake which is apparent from record in distinction to a purported mistake which requires to be established by arguments and long drawn process of reasoning on points on which there may possibly be two opinions

In the instant case, the assessee has preferred captioned appeal arising in the rectification proceedings before the lower authorities to establish the factum of apparent mistake. In view of the narrow and limited scope of section 154 of the Act, it is difficult to say that CPC-AO has committed apparent error per se within the scope of section 154 of the Act while adopting the figures towards inadmissible expenses debited to P&L account as certified by the Tax Auditor. In the wake of guidance provided by Tax Audit Report, the CPC do not appear to have committed any apparent error while making adjustment under section 154 of the Act. Any position to be taken contrary to the Tax Audit Report being in the realm of subjectivity is plainly opposed to the basic tenets of section 154 of the Act. Therefore without expressing our opinion on merits, we are convinced that alleged error sought to be pointed out on behalf of the assessee does not fall within the sweep of prima facie mistake of apparent nature envisaged under section 154 of the Act. The appeal of the assessee in rectification proceedings is thus not maintainable and hence requires to be summarily dismissed at the threshold as fairly accepted on behalf of the assessee owing to narrow scope of such proceedings

However, on conspectus of all the facts and circumstances and having regard to the fact that plea of the assessee that such expenses/liability has not been claimed at the first instance and thus no disallowance is warranted has not been addressed on merits, we consider it expedient to grant liberty to the assessee in the interest of fair play to pursue appellate remedy against the original proceedings in accordance with law if so legally advised. It shall be open to the assessee to raise an appropriate plea for condonation of delay owing to lapse of time due to ongoing rectification proceedings before the appellate authorities. The first appellate authority shall take into account such bonafides while admitting belated appeal against order under Section 143(1) for adjudication on merits and shall take a benign view in the matter.

In terms of delineations noted above, the appeal of the assessee is dismissed in limine as infructuous