IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA (SMC) BENCH: AGRA

BEFORE SHRI A. D. JAIN, JUDICIAL MEMBER

I.T.A No. 328/Agra/2016
(ASSESSMENT YEAR-2010-11)

M/s A.K. Transport Agency, Bagia Mangoo Lal Kaimganj, Farrukhabad. PAN:AAPFA3994E **(Assessee)**	**Vs.**	ITO,Ward-2(1), Farrukhabad. **(Revenue)**

Assessee by	**Shri Atul Agarwal, CA & Ms. Anjali Joshi, Adv.**
Revenue by	**Shri Waseem Arshad, Sr.DR.**

Date of Hearing	**31.05.2018**
Date of Pronouncement	**30 .07.2018**

ORDER

This is assessee's appeal for A.Y. 2010-11, taking the following grounds:

"1. In the present appeal, the issue relates to applicability of the provisions of section 154 in the case of the assessee. The assessee has filed return on 07-09-2010 declaring income of Rs.8,69,030/-. Assessment was completed u/s 143(3) of the Income Tax Act, 1961, vide order dated 20-06-2012, wherein the income was assessed at Rs. 9,69,030/- by making Ad-hoc addition of Rs. 1,00,000/-, which was accepted by the assessee and tax was deposited.

2. *The Assessee Officer, while completing assessment u/s 143(3) of the Income Tax Act, 1961, was satisfied by the explanation given by assessee regarding the cash payment of certain expenses of Tyres & tubes and Diesel & Oil as being normal and valid in the circumstances of the case where the assessee is in the business of plying of trucks. The expenses on account of Tyres / tubes and oil/ Diesel routinely occur as and when breakdown happens or requirement arises. Assessee is in the business of plying or trucks and hence diesel has to be filled en-route as and when necessity arises, which can't be paid by cheque. The assessee also stated that breakdown of tyres happen while plying the truck, which is many a times out and far away from assessee's main office of business. There it is not at all possible to pay the expenses by cheque.*

3. *In the case of 'Asst. Commissioner of Income Tax circle 1, Gwalior vs. Cardinal. Drugs Pvt. Ltd. Gwalior" (Income Tax Appellate Tribunal, Agra, 2013), it has been observed that "the power conferred by provisions of sec 154/155 is a power to correct mistake and not a power to review. U/s 154 an A.O. can't be permitted to revise or review his earlier order, there being no change in facts or circumstances and when entire material is before him during the course of original proceedings whether completed u/s 143(3) or sec 250."*

In the present case also, there is no change in the facts or circumstances and the entire material was available before the Assessing Officer during the course of proceedings u/s M3(3) of the Income Tax Act, 1961.

4. *In the landmark judgment of the supreme court in T.S. Balaram ITO Vs VoIkart Brothers 821ITR 50 (Supra), the court held that a mistake apparent on record must be obvious and parent mistake and not something which can be established by a process of reasoning on which there may conceivably be two opinions. A decision on a debatable point of law is not a mistake apparent from record.*

5. *Further, it has been held by the Hon'ble Apex Court in case of CIT Vs. Hero Cycles Pvt. Ltd. (1997) 228 ITR 463 (SC) that rectification is not possible, if the question is debatable.*

6. *The assessee has declared all particulars related to the case in question and regarding assessment to be framed u/s 14393) of the Act for the A.Y. 2010-11. In the A.Y. 2010-11 A.O. has consciously taken the view and was satisfied by the explanation regarding the-cash payment of certain expenses, as already stated above, during the course of proceedings u/s 14393) of the IT Act, 1961 and made Ad-hoc additions of Rs. 1,00,000/-. The Assessing Officer is not empowered to take a contrary view now when the entire assessment order has already been*

framed. It is against the spirit of provision of section 154 of the Act.

7. The assessee filed an appeal with CIT (Appeals) Aligarh on 25.05.2015 against the order of the Ld. A.O. wherein the income was assessed at Rs. 39,96,550/-. The Ld. CIT upheld the order and confirmed the disallowance u/s 40A (3)."

2. The issue relates to cash payment of expenses of tyres and tubes and diesel and oil. The assessee filed return declaring income at Rs.8,69,030/-. The same was assessed at Rs.9,69,020/-, vide assessment order dated 20.06.2012, passed u/s 143(3) of the IT Act. Subsequently, the AO observed that the assessee had incurred expenses for purchase of tyres and tubes and HSD and oil in cash to the tune of Rs.5,93,500/-, respectively on various dates, in excess of Rs.20,000/-. The AO issued notice u/s 154 of the Act for rectification of this mistake. The assessee explained that out of total purchase of diesel of Rs.42,33,690/-, diesel of Rs.26,55,030/- was purchased on retail from different petrol pumps as per requirement and similarly tyres and tubes of Rs.8,99,750/- were purchased, out of which, tyres and tubes of Rs.5,93,510/- were purchases in cash. The AO was not satisfied with this explanation. He held that the expenses were made in cash in violation of the provisions of section 40A(3) of the Act. He made disallowance under the said provision and the total income of the assessee was re-computed at Rs.39,96,550/-. The ld. CIT(A) confirmed the disallowance. He held that non-

application of legal provisions is an apparent mistake of law which can be rectified under the provisions of section 154 of the Act; and that no evidence or circumstances have been brought on record to show that certain transactions were covered by exceptions provided under Rule 6DD of the IT Rules.

3. On behalf of the assessee, it has been contended that there is no mistake apparent from record and the AO erred in passing the order u/s 154 of the IT Act and the ld. CIT(A) erred in confirming the same; that under section 154, the AO cannot be permitted to revise or review his earlier order, if there is no change in the facts and circumstances of the case and when the entire material was before him during the original assessment proceedings. Reliance has been placed on 'ACIT vs. M/s Cardinal Drugs Pvt. Ltd. Gwalior, order dated 08.08.2013 passed by this Bench of the Tribunal. On merits, it has been argued that expenses on account of tyres and tubes and diesel and oil routinely occur as and when break down happens or requirement arises; that the assessee is in the business of plying of trucks and, therefore, diesel has to be filled enroute and as when the necessity arises; that payment for this cannot be made by cheque; that similarly, break down of tyres also happens while plying the trucks at places for away from the assessee's main office of business; that thus, in this case also, it is not possible to make payment by cheque.

4. Per contra, the Department submits that since the AO had not examined in the original assessment order, the issue of disallowance of cash expenses u/s

40A(3) of the Act, there was, certainly, a mistake of law apparent from record. Reliance has been placed on 'CIT vs. Popular Vehicle and Service Ltd.', 191 Taxman 333 (Ker). Further, reference has also been made to section 154 (1A) of the Act, as per which, where any matter has been considered and decided in any proceeding by way of appeal or revision relating to any order referred to in section 154(1), the Authority passing such order may amend the order u/s 154(1) in relation to any matter other than the matter which has been so considered and decided.

5. Heard. Question is as to whether the ld. CIT(A) is justified in upholding the rectification order passed by the AO when, as per the assessee, there was no mistake apparent from the record, since there was no change in the facts and circumstances of the case and the entire material had been placed before the AO during the original assessment proceedings. A perusal of the original assessment order dated 20.06.2012 shows that the AO has reproduced therein the assessee's written submissions dated 15.06.2012, wherein, the assessee has submitted as follows:

> *"2. Regarding diesel exp. The petitioner assessee want to say that the petitioner assessee is doing business of truck plying and handling of RFC and the business is run (Truck) on diesel and oil basis due to that reason the diesel and oil exp. Rs.42,33,690.00 has been done during the year. Which has been reflected from books of a/c. I*

am enclosing herewith some photo copy of diesel voucher for test checking and producing all original voucher of diesel for your kind perusal.

3. *Regarding tires and Tubes exp. The petitioner assessee want to say that the petitioner assessee is doing business of truck playing and handling of RFC and the business is run (Truck) on Tires and tubes basis due to the reason the tires & tubes exp. Rs.8,99,750/- has been done during the year. Which has been reflected from books of a/c I am enclosing herewith some photo copy of Tires & Tubes voucher for test checking and producing all original voucher of Tires & Tubes for your kind perusal."*

6. The AO made disallowance of Rs.1,00,000/-, observing as under:

"The explanation / evidences given by the assessee has been considered and considering the all facts of the case I think it will be reasonable to made an adhock addition of Rs.1,00,000/- in above all expenses heads and same amount is added back which is under consideration, treated as the income of the year. Rs.1,00,000/-"

7. Thus, it is evident that the assessee did file the details of the expenses. These details were considered by the AO and it was thereon that he made the disallowance of Rs.1,00,000/-.

8. As per Section 154 of the IT Act, provides for rectification of mistakes. In this regard, in 'Cardinal Drugs Pvt. Ltd.' (supra), it has been held that the power

conferred by the provisions of section 154 is a power to correct mistakes and not a power to review; that u/s 154 of the Act, the AO cannot be permitted to revise or review his earlier order, there being no change in facts and circumstances and when the entire material was before him during the original proceedings. The Chandigarh Bench of the Tribunal, in 'M/s Citi Clinic Pvt. Ltd. vs. ACIT', for A.Y. 2006-07, in ITA No.112/Chd/2017, has held that the AO has no power to review his entire assessment order and to make certain additions in the order u/s 154 of the Act; that when the AO has consciously taken a view to frame a regular assessment and has made certain additions, he is not empowered to take a contrary view to review the entire assessment order already framed. No decision contrary to these decisions has been cited. Popular Vehicle (supra) does not pertain to a dispute about the invocation of the provisions of section 154. Rather, it deals with the amended provisions of section 147 of the Act, which is not under challenge herein.

9. So far as regards reliance by the Department on section 154(1A), the same has no application whatsoever to the facts of the present case. It has not been shown otherwise.

10. Therefore in the above discussed facts and circumstances of the present case, I find this challenge of the assessee to be justified and it is accepted. Recourse, if any available with the Department was that under section 263 of the Act and not

u/s 154. Nothing further survives for adjudication, as such. Accordingly, the order under appeal is reversed and the order passed by the AO u/s 154 is cancelled.

11. In the result, the appeal is allowed.

Order pronounced in the open court on 30/07/2018.

Sd/-
(A.D. JAIN)
JUDICIAL MEMBER

AKV
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR