

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री भागचंद, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

M/A. No. 152/JP/2016
(Arising out ITA No. 339/JP/2013)
निर्धारण वर्ष / Assessment Year : 1988-89

M/s Brothers Pharma Pvt. Ltd. 869-70, Road No. 14P, V.K.I. Area, Jaipur.	बनाम Vs.	The ITO, Ward No. 4(3), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACB 8831 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mahendra Gargiya (Adv.)
राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 04/05/2018
उदघोषणा की तारीख / Date of Pronouncement: 14/05/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

By ways of this miscellaneous application the assessee is seeking recalling of the order of this Tribunal dated 21.04.2016.

2. The Id. AR of the assessee has submitted that while deciding the appeal of the assessee the Tribunal has not considered the detailed factual submissions as well as affidavits filed by the assessee in support of the claim that an application U/s 154 of the Act was filed by the

assessee on 08.09.2008. He has further submitted that the Tribunal has confirmed the finding of the Id. CIT(A) on the factual aspect of the point that there was no acknowledgement of filing of the alleged rectification petition dated 08.09.2008. The Id. AR has further contended that the said application filed by the assessee duly bears the stamp of office of the Id. CIT(A)-III, Jaipur however, it is a routine practice in the office of taxing authorities that no proper receipt is issued but only a stamp is put on the copy of the document/application. Therefore, when the assessee has filed a copy of application duly stamp of office of the Id. CIT(A) dated 08.09.2008 then not accepting the said fact constitutes a mistake apparent on record. He has further pointed out that the order suffers from mistake due to the reason that the written submissions filed by the assessee along with the affidavit were not considered by the Tribunal while passing the impugned order. In support of his contention, he has relied upon the decision of Hon'ble Supreme Court in case of **CIT vs. Daulat Ram Rawatmull 87 ITR 349** as well as **decision in case of CIT vs. Bedi & Co. Pvt. Ltd. 230 ITR 580**. Thus, the Id. AR of the assessee has submitted that some very important contention has been completely lost site of the Tribunal while

passing the impugned order and therefore, there is a mistake in the impugned order of the Tribunal which is required to be rectified.

3. On the other hand, Id. DR has vehemently opposed the miscellaneous application filed by the assessee and submitted that the Tribunal has decided the appeal of the assessee on merits after considering all relevant facts as well as the contentions of the assessee. Therefore, there is no apparent mistake on record which can be rectified under the provisions of Section 254(2) of the Act. The assessee is seeking review of the decision taken by the Tribunal on merits of the case.

4. We have considered the rival submissions as well as relevant material on record. The controversy in the appeal filed by the assessee was regarding the application filed U/s 154 on 18.02.2011 was dismissed by the Id. CIT(A) on the ground that the same was barred by limitation being filed after expiry of 4 years from the date of order dated 10.09.2004. The assessee contended before the Tribunal that the said letter dated 18.02.2011 was not a fresh application U/s 154 of the Act but it was only a reminder filed before the Id. CIT(A) to decide the petition filed u/s 154 of the Act on 08.09.2008. Thus, the assessee raised this issue which is purely factual in nature and can be verified

from the record of the Id. CIT(A). The Tribunal while deciding this issue in assessee's appeal has duly reproduce the orders of the Id. CIT(A) dated 08.10.2004 as well as dated 18.01.2013 whereby the application filed U/s 154 of the assessee was rejected by the Id. CIT(A) on the ground of limitation. The contention of the Id. AR of the assessee has duly been recorded the impugned order of the Tribunal in para 4 and 4.1 as under:-

4. From the side of the appellant learned A.R. Mr. Mahendra Gargiya appeared and pleaded that the rectification application filed by the assessee on 08.09.2008 should not have been doubted and rejected. Learned A.R. has pleaded that the petition filed on 18.02.2011, which was held as time barred, was nothing but a reminder of the said previous application. Since the previous application was within the prescribed time limit, hence it was wrong on the part of the learned. CIT(Appeals) to hold that the claim of rectification of the assessee was time barred. In other words, learned A.R. has placed strong reliance on the impugned rectification application dated 18th Sept., 2008.

4.1 One more fact has also been brought on record that against the penalty order u/s 271(1)(e) learned CIT(Appeals) in appeal hearing No. 184/JPR/2006-07 vide order dated 113th January, 2011 has deleted the penalty by accepting the fact that the addition in question was not sustainable in the eyes of law. Learned A.R. has, therefore, pleaded that in a situation when on identical facts no penalty was levied on the amount in question, therefore, on the same lines the learned CIT(Appeals) should have rectified the mistake, instead of

rejecting as barred by limitation. In support of this plea he has also referred an order of Settlement Commission and requested that on the ground of natural justice the rectification is permissible in the eyes of law."

Thus, it is clear that the crux and substance of the contentions and case of the assessee was duly recorded by the Tribunal in the impugned order. It is not necessary and even not appropriate to record each and every word and sentence of the submissions of the parties but if the pith and substance of the contention of the parties are recorded in the order the same is sufficient to show that the Tribunal has considered the contention of the parties. The Tribunal has decided the issue in para 6 and 6.1 of the impugned order as under:-

"6 I have heard both the sides at some length. I have also perused the records available before me. First of all I shall deal with the impugned rectification petition allegedly dated 8th Sept., 2008 filed before the learned CIT(Appeals). About the genuineness of the impugned petition u/s 154, in my opinion the learned CIT(Appeals) was the only authority to comment on the existence of the petition in his office records. I have noticed that the learned CIT(Appeals) has investigated and thereafter on perusal of record he has noticed that the said petition was not available on record. He has further commented that the stamp affixed did not bear any signature of the receipt clerk. Learned CIT(Appeals) has also noticed that there was no receipt. no.

mentioned on the impugned rectification application. Learned CIT(Appeals) has searched the office record and found that -no such rectification application was ever received as per the "Receipt Register" and "Appeal Register" maintained in his office. Therefore, learned CIT(Appeals) has issued a show cause notice to the assessee as to why the impugned rectification application dated 18-02-2011 be dismissed as barred by limitation. In the light of the factual matrix, it is not worthy on my part to reject the findings given on facts. Obviously why the Officer of Commissioner rank would not entertain a rectification application if it was found in his office records. Only after thorough search he was not able to trace the said application. On the other hand, he applicant has also not satisfactorily explained the defects which were pointed out by the learned CIT(Appeals) that why there was no receipt no. on the stamp. How an office stamp was affixed on the said rectification petition is beyond understanding. Without commenting any further, I hereby hold that the learned CIT(Appeals) is justified in not entertaining the alleged petition filed u/s 154 of I.T. Act. The findin2, on facts stated by him should not be disturbed, specially when no evidence from other side is placed before me.

6.1 As far as the question of limitation prescribed under the Act, it is Worth mentioning that section 154(7) prohibits that no rectification or amendment shall be made by an officer of the Revenue Department after the expiry of four years from the end of the financial year in which the order sought to be amended was passed. In a statute a limit is provided so that the steps should be taken by the concerned Officers within a reasonable time. Once a limitation is prescribed then on one hand the officer incharge is expected to pass an .order within the prescribed time and if an order is not passed within the

prescribed time then such an order is always held as barred by limitation. Hence not sustainable in the eyes of law. Side by side the applicant seeking a rectification can also not take the liberty of filing a rectification application at anytime. as per his convenience. Particularly in this case the original order was passed by learned CIT(Appeals)-III, Jaipur on 10-09-2004 and the applicant has pursued the application in the year 2013. There is nothing on record that why the appellant had pursued the application after a long gap of about 8 to 9 years. It has also not been explained that even if an alleged rectification application was submitted on 8th Sept., 2008 then why it was not pursued at that point of time and why it was pressed only in the year 2011. All these quest ons remained unanswered before me. The Tribunal has no jurisdiction to compel the Revenue Officer to go outside the limits of time prescribed under the statute. A writ mandamus is the jurisdiction of the Hon'ble High Court but beyond the jurisdiction of the appellate Tribunal. Because of the reasons as discussed herein above I am not inclined to interfere with the view taken by learned CIT(Appeals), therefore, both the grounds raised before me are hereby dismissed."

Thus, it is clear that the Tribunal has elaborately discussed the factual matrix of the issue and finally come to the conclusion that the assessee has not produced any material/evidence to establish it beyond doubt that the assessee has filed alleged application u/s 154 of the Act on 08.09.2008. Even at the time of this miscellaneous application the assessee has not produced any document or record to prove that the

alleged application u/s 154 of the Act dated 08.09.2008 was filed before the Id. CIT(A). Therefore, the assessee is harping on the point that the Tribunal should presume that such application was filed by the assessee when the assessee has claimed so because the stamp of the Id. CIT(A) is appearing on the said application without any signature or acknowledgement. The Id. CIT(A) has verified its record at the time of passing the impugned order and found that no such application was received by its office. The claim of the assessee was verified from the letter received register and appeal received register maintained in the office of the Id. CIT(A). Therefore, when the alleged application was not found to be received in the office as per the record maintained by the Id. CIT(A) then, in the absence of any evidence to establish beyond that the said application was filed by the assessee, the decision taken by the Tribunal on the basis of fact of the case cannot be said to have suffered from any error merely on the basis of the contentions and submissions which is nothing but assumption of facts. Hence, in the absence of any fresh evidence which can have effect of charging the outcome of the decision on the matter the miscellaneous application filed by the assessee is devoid of any merit or substance.

In the result, the miscellaneous application is dismissed.

Order pronounced in the open court on 14/05/2018

Sd/-
(भागचंद)
(Bhagchand)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 14/05/2018.

*Santosh.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Brothers Pharma Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-4(3), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {M.A. No. 152/JP/2016}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar