

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

I.T.T.A.No.780 of 2017

Date: 12.12.2017

Between:

The Prl. Commissioner of Income Tax,
Vijayawada

...

Appellant

And

Optimus Commodity Futures (P) Ltd.,
402, 4th floor, Imdadghar Building,
Sivalayam Street, Vijayawada

...

Respondent

Counsel for the Appellant

:

Mr.J.V.Prasad

Senior Standing Counsel

for Income Tax Department

Counsel for the Respondent

:

The Court made the following:

Judgment : (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This appeal is filed by the revenue against order dated 23.12.2016 in I.T.A.No.49/Vizag/2015 on the file of the Income Tax Appellate Tribunal, Visakhapatnam Bench, Visakhapatnam, raising the following substantial questions of law:

- “1. Whether, on the facts and in the circumstances of the case and in law, the Tribunal is justified in upholding the decision of the Id. CIT(A) who considered that the issue which is debatable cannot be termed as mistake apparent from record and rectified u/s. 154 of the Act?
2. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in dismissing the appeal filed by the Department instead of remitting the issue back to the A.O. for proper examination of the issues involved under the provisions of the Act?”
2. Heard Mr.J.V.Prasad, learned Senior Standing Counsel for the Income Tax Department.
3. The brief facts as could be culled out from the record, are that the respondent-assessee is a private limited company, which is in the business of trading of commodity futures. It has filed its return of income for the assessment year 2009-10 on 29.09.2009, declaring a total income of Rs.7,04,990/-. The case was selected for scrutiny under CASS and the assessment was completed u/s. 143 (3) of the Income Tax Act, 1961 (for short ‘the Act’) on 24.11.2011, determining the total income of Rs.9,54,990/-. Thereafter, the Assessing Officer (for short ‘AO’), invoking his powers under Section 154 of the Act, has revised the total income by way of purported rectification, to Rs.92,32,780/-, by making additions

towards disallowance of depreciation on membership card, excess depreciation on plant and machinery and additions towards brokerage income, which was not brought to tax.

4. Feeling aggrieved, the respondent-assessee has filed an appeal before the Commissioner of Income Tax (Appeals) [for short 'CIT(A)']. After receiving comments from the AO and considering the evidence adduced by the respondent-assessee, the CIT (A), held that the AO was not justified in invoking the provisions of Section 154 of the Act, in the name of rectifying the mistakes, which are in the nature of debatable issues. The CIT (A), held that under the provisions of Section 154 of the Act, rectification could be made to rectify any mistake apparent on record and that no additions by a long drawn process of reasoning, which may admit of more than one option, could be made under the said provision. The CIT (A) accordingly, set aside the purported rectification order of the AO. Assailing the said order of CIT (A), the revenue filed I.T.A.No.49 of 2015. Upon detailed examination of the case, the Tribunal has concurred with the view of the CIT (A) and held that, the issue whether the assets such as air conditioners, televisions, LCD projectors, water coolers, EPABX, etc., fall under the head 'plant and machinery', which is eligible for depreciation of 15% or they fall under the head of 'electrical fittings', which is eligible for depreciation of 10%, is a debatable issue, which can be resolved only by a process

of discussions and deliberations and that, additions under the said head cannot be made in exercise of the powers of the AO under Section 154 of the Act. As regards the brokerage income, the Tribunal has observed that in his rectification proceedings, the AO has taken a view that administrative expenditure incurred by the respondent-assessee should be proportionately allocated to speculative and non-speculative business and that the issue of apportionment of expenditure proportionately to the speculative and non-speculative business is a debatable issue, which depends upon various factors which admit of two possible views and that, therefore, the said issue also falls outside the scope of Section 154 of the Act. On these premises, the Tribunal has affirmed the decision of the CIT (A) and dismissed the appeal.

5. On a careful consideration of the reasons assigned by both the appellate fora, we have no reason to differ with the same. Accordingly, the substantial questions of law raised by the revenue, are held against it.

6. For the aforementioned reasons, the appeal is dismissed.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 12th December, 2017

msb

