URMILA PRAMOD INGALE
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 409 OF 2018

Pr. Commissioner of Income Tax-14 ….. Appellant
Vs.
M/s. Godrej Industries Ltd. ….. Respondent

Mr. Suresh Kumar, for Appellant.
Mr. P.J.Pardiwala, Sr. Advocate a/w Mr. Jeet Kamdar i/b Mr.Atul K. Jasani, for Respondent.

CORAM: K.R.SHRIRAM, J &
FIRDOSH P. POONIWALLA, J.

DATED : JUNE 28, 2023

P.C.

1. The Principal Commissioner of Income Tax ('PCIT') has filed this appeal aggrieved by the order dated 07/04/2017 passed by the Income Tax Appellate Tribunal ('ITAT') dismissing the appeal of Revenue.

2. Assessee-respondent filed on 30/10/2001 its return of income for Assessment Year 2001-02 declaring income of nil, after set off of brought forward losses and depreciation and declared a book profit of Rs.33,13,25,132/-. The return was processed under Section 143(1) of the Income Tax Act, 1961 ('the Act'). The case was selected for scrutiny and notice under Section 143(2) of the Act was issued to the assessee. In the assessment order made under Section 143(3) of the Act, the Assessing

Officer ('AO') made various additions and deletions. The assessment order dated 27/02/2004 was impugned in the appeal filed by respondent before CIT(A). By an order dated 05/10/2004, CIT(A) partly allowed the appeal of respondent. This order dated 05/10/2004 was impugned by respondent in appeal filed before ITAT. Revenue also filed appeal before ITAT impugning order passed by CIT(A) which came to be disposed on 30/08/2007. ITAT disposed the appeal filed by respondent on 05/09/2007 by giving partial relief.

3. Consequent to the order of ITAT, the order giving effect to ITAT's order was passed on 25/08/2008 by which the AO determined the total income in accordance with the normal provisions at nil and the book profit at Rs.33,13,25,132/-. The AO passed an order dated 13/04/2009 giving effect to ITAT's order in department's appeal in which he determined the total income in accordance with the normal computation at nil but increased the book profit to Rs.33,51,66,399/- on account of change in deduction that he allowed under Section 80HHC of the Act.

4. On 29/03/2014, the AO passed an order under Section 154 of the Act rectifying the order dated 13/04/2009 and redetermined the book profit at Rs.53,02,83,061/- as he added the provision for depreciation in the value of the long term investment as a consequence of the retrospective amendment introduced by the insertion of clause (i) to Explanation 1 below Section 115JB(2).

5. This was challenged by respondent in an appeal before CIT(A). CIT(A) allowed respondent's appeal by order dated 10/04/2015 and held that the notice under Section 154 seeking to rectify the error ought to have been issued by 31/03/2008 and therefore the same was barred by limitation. In doing so, he followed his order for Assessment Year 2005-06. This order of CIT(A) was taken in appeal by Revenue before ITAT and ITAT, by order dated 07/04/2017, which is impugned in this appeal, dismissed the appeal of the Revenue. The ITAT held the rectification order was passed to give effect to the retrospective amendment made by the Finance Act, 2009. The issue which was sought to be rectified was never the subject matter of the appeal either before the CIT(A) or before the ITAT. The ITAT followed its earlier order in the case of [1]***ACIT Vs. M/s. Godrej Sara Lee Ltd.*** (now amalgamated into Godrej Consumers Products Limited) and came to the conclusion that it was not permissible for the AO to rectify the order dated 13/04/2009 on an issue which was not the subject matter of the appeal before it.

6. The following substantial questions of law are proposed:-

> (a) Whether on the facts and in the circumstances of the case and law, the Hon'ble Tribunal was justified in holding that the Rectification order u/s. 154 of the I.T. Act passed on 29/03/2014 is not in the preview of section 154(1A) of the I.T.Act ?

1 Order dated 22/08/2016 in ITA No. 118/Mum/2015

> (b) Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in holding that the rectification order u/s. 154 of the I.T. Act passed on 29.03.2014 is barred by time limitation within meaning of section 154(7) of the I.T. Act ?
>
> (c) Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in distinguishing the judgement of the Hon'ble Apex Court in the case of Hind Wire Industries Ltd with the present case ?

7. Mr. Suresh Kumar submitted, adopting what was submitted before the ITAT, even though the order giving effect to the ITAT's order dated 13/04/2009 was passed by the AO to give effect to the express directions of the ITAT, the fact remained that the AO was required to determine the correct total income as per the provisions of the Act. While doing so, the AO cannot ignore the clear provisions of the Act which even though may not be arising out of ITAT's order but are vital for the determination of the correct total income. Hence, the claims of respondent that there is no mistake apparent from records in the order giving effect to the ITAT's order is not valid. Mr. Suresh Kumar submitted that, therefore, the AO has rectified the order dated 13/04/2009 giving effect to the order of ITAT. Mr. Suresh Kumar also submitted that the only requirement under Section 154(7) of the Act is that the amendment under Section 154 should be made within four years from the financial year in which order sought to be

amended is passed and since four years has not elapsed from the date of passing the order giving effect to the ITAT's order, the notice under Section 154 of the Act is not at all barred by limitation.

8. Mr. Pardiwala submitted, relying on the judgment of the Bombay High Court in case of [2]***CIT Vs. Sakseria Cotton Mills Ltd.*** that period of limitation under Section 154(7) of the Act in respect to the points not subject matter of order under Section 154 of the Act will apply from the date of original assessment order and not from the date of assessment order of the AO giving effect to appellate order. Mr. Pardiwala submitted that period of limitation will be reckoned from the date of original assessment order in respect of points not subjected to appellate jurisdiction. He also relied upon the judgment of the Apex Court in [3]***CIT Vs. Alagendran Finance Ltd.*** He added, ITAT has after hearing the parties, correctly come to the conclusion that when the issue that was sought to be rectified was never the subject matter of the appeal either before the CIT(A) or before the Tribunal, it was not permissible for the AO to rectify under Section 154.

9. Therefore, the settled position is that the AO, while giving effect to the ITAT's order cannot go beyond the directions of the ITAT and since in this case, the issue of calculation of book profit qua diminution in the value

2 (1980) 124 ITR 570
3 (2007) 293 ITR 1 (SC)

of an asset was not the subject matter of the appeal, the Revenue was not justified in contending that the order is within the time limit. We say this because under Section 154(1A) of the Act, the AO can rectify the order in respect of a matter other than the matter which has been considered and decided by the appellate/revisional authority. In the instant case, since the issue of diminution in value of an asset for calculating book profit was not a subject matter of appeal or revision, the original order under Section 143(3) of the Act dated 27/02/2004 is the order which can be rectified by the AO and since the order passed in 2004 cannot be rectified after a period of 4 years, the order passed under Section 154 of the Act dated 29/03/2014 is barred by Section 154(7) of the Act.

10. In the circumstances, we do not find any reason to interfere.

11. Appeal dismissed.

(FIRDOSH P. POONIWALLA, J) **(K.R.SHRIRAM, J)**