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W.P.No.6143 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	12.07.2023
Pronounced on	23.01.2024

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.6143 of 2023

and

W.M.P.Nos.6157 & 6158 of 2023

M/s.Sabari Alloys & Metals India Private Limited,
Represented by its Authorized Signatory,
Mr.G.Muthusamy,
A3, SIPCOT Industrial Complex,
Gummidipoondi – 601 201.

... Petitioner

Vs

The Deputy Commissioner of Income Tax,
Corporate Circle 3(1), Chennai,
Room No.411, Fourth Floor,
Chennai – Wanaparthi Block,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

... Respondent



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Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the file of the respondent in ITBA/COM/F/17/2022-23/1049183617(1) and quash the impugned notice dated 27.01.2023 issued under Section 154 of the Income Tax Act, 1961 ('Act') for the Assessment Year 2018-19 as illegal and not in accordance with law.

For Petitioner : Mr.R.Sivaraman

For Respondent : Mrs.S.Premalatha
Junior Standing Counsel
for Mr.R.S.Balaji
Senior Standing Counsel

ORDER

The petitioner has challenged the Impugned Notice dated 27.01.2023 issued under Section 154 of the Income Tax Act, 1961 seeking to rectify the alleged mistake committed by the Assessing Officer in the Assessment Order dated 23.01.2021.



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2. The petitioner had filed a regular return under Section 139 of the Income Tax Act, 1961 on 04.03.2019 for Assessment Year 2018-19. A notice dated 28.09.2019 was thereafter issued to the petitioner under Section 143(2) read with Section 143(3A) and Section 143(3B) of the Income Tax Act, 1961. It was specifically stated that the said notice was being issued only for a limited scrutiny of “Agricultural Income” of the petitioner. The petitioner appears to have replied to the above notice. Thereafter, a scrutiny assessment order dated 23.01.2021 was passed under Section 143(3) of the Income Tax Act, 1961.

3. It is submitted that only information that was called for from the petitioner was regarding the “Agricultural Income” of the petitioner whereas the impugned notice dated 27.01.2023 issued under Section 154 of the Income Tax Act, 1961 seek to rectify the Assessment Order dated 23.01.2021 under the following three heads:-

(i) Interest on Borrowing:-

As the interest of Rs.1,55,08,736/- was not actually paid but only provided, the same is required to be disallowed and brought to tax.



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(ii) Goods in Transit:-

Goods in transit to the tune of Rs.2,60,13,309/- as on 31.03.2017(Note No.10 Inventories under current assets in the balance sheet). However, as per the P&L of the current year i.e. AY 2018-19, this amount is not reflected in the opening stock/sales figures(Note No.16). The same is required to be disallowed and brought to tax.

(iii) Excess Refund :-

From the tax computation sheet, it was noticed that a an amount of Rs.3,25,500/- being the excess refund granted under Section 143(1) was added back to the tax payable under Section 143(3) dated 23.01.2021. However, it is noticed that the corresponding interest leviable under Section 234D for excess refund was omitted to be levied.

4. It is therefore submitted that the power to rectify the Assessment Order dated 23.01.2020 under Section 154 of the Income Tax Act, 1961 was not available to the respondent to bring those issues which were neither considered nor reflected in the aforesaid Assessment Order dated 23.01.2021 passed under Section 143(3) of the Income Tax Act, 1961.



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5. That apart, it is submitted that power to rectify an order under Section 154 of the Income Tax Act, 1961, is confined only to “error apparent on the face on records” or when there were clerical mistakes. It is submitted that there is no error apparent on the face on records in the scrutiny Assessment Order under Section 143(3) of the Income Tax Act, 1961 on 23.01.2021.

6. The learned Counsel for the petitioner has placed reliance on the following decision of the Hon’ble Supreme Court:-

- i. ***T.S.Balaram, Income Tax Officer vs. Volkart Brothers, (1971) 82 ITR 50 (SC);***
- ii. ***Commissioner of Income Tax vs. Hero Cycles (P) Ltd., (1997) 94 Taxman 271(SC).***

7. It is submitted that in this case, there are no jurisdictional facts and therefore the power sought to be exercised under Section 154 of the Act was clearly without jurisdiction and therefore Impugned Notice is liable to be quashed.



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WEB COPY 8. The learned Junior Standing Counsel and the learned Senior Standing Counsel for the respondent would submit that the writ petition is pre-mature.

9. It is submitted that only a notice under Section 154 of the Income Tax Act, 1961 has been issued to the petitioner. It is submitted that since there was an error apparent on the face of record, the Assessment Officer has rightly invoked the jurisdiction under Section 154 of the Income Tax Act, 1961. It is therefore submitted that the present writ petition is liable to be dismissed.

10. It is submitted that the present writ petition is pre-mature as no order has been passed by the Assessing Officer under Section 154 of the Income Tax Act, 1961.

11. It is submitted that if the petitioner is convinced that the notice was without merits and there is no scope for interference at this stage. It is therefore open for the petitioner to reply to the Impugned Notice.



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WEB COPY 12. It is submitted that only after the respondent passes appropriate orders rectifying the Assessment Order dated 23.01.2021, question of challenging the correctness of the same would arise whether on merits or on account of jurisdictional issue. It is further submitted that there is no determination by mere issuance of the Impugned Nsotice under Section 154 of the Income Tax Act, 1961.

13. Under Sub-section 1(A) to Section 154 of the Income Tax Act, 1961, it is submitted that where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, under Sub-section 1(A) to Section 154 of the Income Tax Act, 1961 notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.



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WEB COPY 14. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent. I have perused the Judgments cited. I have also perused notice issued under Section 143(2) of the Income Tax Act, 1961 on 28.09.2019 for limited scrutiny assessment regarding agricultural income of the petitioner and the assessment notice and assessment order passed under Section 143(3) of the Act on 23.01.2021.

15. The point for consideration is whether the invocation of Section 154 of the Income Tax Act, 1961 was justified or not? and whether there was any error apparent on the face of record in the Assessment Order dated 23.01.2023 and therefore whether the invocation of Section 154 of the Income Tax Act, 1961 was justified or not?

16. Assessment Order dated 23.01.2021 passed under Section 143(3) of the Act preceded notices issued under sub-section(1) of Section 142 of the Income Tax Act, 1961 dated 23.01.2020 and 01.10.2020.



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WEB COPY 17. Relevant portion of the assessment order passed under Section

143(3) of the Income Tax Act, 1961, reads as under:-

Sl.No	Issues
i.	Agricultural Income
ii.	The assessee is private limited company.
iii.	On the basis of material available on record, the explanation of the assessee on above issue is accepted and hence no addition is made.
iv.	The assessment of income is done as per computation sheet and the sum payable is determined as per the demand notice.

18. By the Impugned Notice dated 27.01.2023 issued under Section 154 of the Income Tax Act, 1961, the respondent has sought to alter the Assessment Order dated 23.01.2021 for the Assessment Year 2018-2019. The respondent seeks to alter the Assessment Order dated 23.01.2023 made under Section 143(3) of the Income Tax Act, 1961 by including those issues which were not expressly dealt earlier namely (i) Interest on Borrowing, (ii) Goods in Transit & (iii) Interest on account of Excess Refund of amounts. These items were not included in the Assessment Order dated 23.01.2021.



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19. Section 154(1) of the Income Tax Act, 1961 reads as under:-

“Rectification of Mistake:-

*154.(1) With a view to rectifying **any mistake apparent from the record**, an income-tax authority referred to in section 116 may,-*

(a) amend any order passed by it under the provisions of this Act;

(b) amend any intimation or deemed intimation under sub-section (1) of section 143;

(c) amend any intimation under sub-section (1) of section 200A.”

20. Sub-Section (2) to Section 154 of the Income Tax Act, 1961, reads as under:-

“154(2) Subject to the other provisions of this section, the authority concerned—

(a) may make an amendment under sub-section (1) of its own motion, and



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*(b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee [or by the deductor], and where the authority concerned is the [***] [Commissioner (Appeals)], by the [Assessing] Officer also.*

21. Under Sub-Section(3) to Section 154 of the Income Tax Act, 1961, an amendment, shall not be made unless the authority concerned has given notice to the assessee or the deductor etc a reasonable opportunity of being heard where such amendment has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee [or the deductor], Thus, it cannot be said that the impugned notice issued to the petitioner was without jurisdiction as the assessing officer is empowered to rectify a mistake which is apparent from the record.”

22. In the case of **S.A.L.Narayan Row and another vs. Ishwarlal Bhagwandas and another**, AIR 1965 SC 1818, the Honble Supreme court held that, “an omission to do what he was bound to do under law was an error apparent on the face of the record and therefore the Income Tax Officer was competent to rectify an order passed under Section 35 of the Income Tax Act,



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23. In the case of **Commissioner of Income Tax vs. Hero Cycles (P) Ltd.**, (1997) 94 Taxman 271(SC), the Supreme Court held that the rectification under Section 154 of the Income Tax Act can only be made when glaring mistake of fact or law has been committed by the officer passing the order comes apparent from the record. The court held rectification is not possible if the question is debatable. The Court however held that the point which was not examined on fact or in law cannot be dealt as mistake apparent on the record.

24. In the case of **Maharana Mills Private Limited vs. Income Tax Officer**, [1959] 36 ITR 350 (SC), the Hon'ble Supreme Court examined the word "record". It held the word "record" as contemplated by Section 35 of the Income Tax Act, 1922 did not mean only the order of the assessment but it comprises all proceedings on which the assessment order is based.



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25. This Court in the case of **Commissioner of Income Tax vs. M.R.M Plantations Private Limited**, [1999] 102 Taxman 1 (Mad.) held that the word “record” for the purpose of Section 154 (1) is the “record” available with the authorities at the time of initiation of proceedings for rectification, and not merely the record of the original proceedings sought to be rectified.

26. In the case of **T.S.Balaram, Income Tax Officer vs. Volkart Brothers**, (1971) 82 ITR 50 (SC), the Hon’ble Supreme Court held that “a mistake apparent on the record” must be an obvious and a patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions.

27. The power of the officers mentioned in Section 154 of the Income Tax Act, 1961 to correct “any mistake apparent from the record” is undoubtedly not more than that of the High Court to entertain a writ petition on the basis of an “error apparent on the face of the record”.



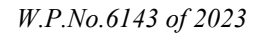
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28. The Court spelt out the distinction between the expressions “**error apparent on the face of the record**” and “**mistake apparent from the record**”. It held suffice it to say that the Income Tax Officer was wholly wrong in holding that there was a mistake apparent from the record of the assessments of the first respondent.

29. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

30. The meaning of the expression, “error apparent on the face of record” is wider than the expression “mistake apparent from the record”. An Assessing Officer is not incompetent to invoke the jurisdiction under section 154 of the Income tax Act, 1961 if such officer had committed a glaring mistake of fact or law while passing the assessment order as held by the Hon’ble Supreme Court in **Commissioner of Income Tax vs. Hero Cycles (P) Ltd.**, (1997) 94 Taxman 271(SC), referred to *supra*.



32. Therefore, there is no merits in the submission that the impugned notice is liable to be interfered and quashed. On the other hand, this writ petition is deserves to be dismissed. It is accordingly dismissed. Consequently, connected miscellaneous petitions are closed. No cost.

23.01.2024

Neutral Citation: Yes/No
Internet: Yes/No
Speaking/Non-speaking Order
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C.SARAVANAN, J.

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To

The Deputy Commissioner of Income Tax,
Corporate Circle 3(1),
Chennai,
Room No.411, Fourth Floor,
Chennai – Wanaparthi Block,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

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and

W.M.P.Nos.6157 & 6158 of 2023

23.01.2024

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