IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCHES, CHANDIGARH

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER &
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

M.A. No. 42/Chd/2018
(in ITA No. 101/Chd/2017)
Assessment Year: 2013-14

Shri Jagmohan Gurbakshish Singh, Prop. Budget Signs, Baddi, Distt. Solan	Vs.	The DCIT, Circle, Parwanoo

PAN No. AKNPS4042H

&

M.A. No. 40/Chd/2018
(in ITA No. 858/Chd/2016)
Assessment Year: 2012-13

M/S Universal Print O Pack, Vill Kishanpura Tehsil Nalagarh Distt. Solan H.P.	Vs.	The ITO, Baddi, H.P.

PAN No. AKNPS4042H

(Appellant) (Respondent)

Appellant By : Parikshit Aggarwal, CA
Respondent By : Sh. Manjit Singh, Sr.DR

Date of hearing : 27.04.2018
Date of Pronouncement : 27.04.2018

ORDER

Per Sanjay Garg, Judicial Member:

The present Misc. Applications have been filed by the applicant-assessee for recalling the order of the Tribunal dated 24.5.2017 in ITA 101/Chd/2017 and dated 19.5.2017 in ITA No. 858/Chd/2016.

2. The Registry has put a note that the applications are time barred by five days. However, Ld. Counsel for the assessee has submitted that in view of the settled legal position of law, the applications cannot be treated as time barred. He in this respect has invited our attention to the relevant provisions of section 254(2) of the Income-tax Act, 1961 (in short 'the Act'), which read as under:-

> **"254.** .....
>
> *(2) The Appellate Tribunal may, at any time within [six months from the end of the month in which the order was passed], with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer*
> ....."

3. The Ld. Counsel has submitted that the order was pronounced on 24.5.2017 and the Registry has taken the said date as relevant date for calculating the period of 6 months from the end of the month in which the order was pronounced. However, the fact is that the order in question was dispatched by the Registry on 29.6.2017, which was received by the assessee in the first week of July, 2017. The Ld. counsel has further relied upon the various decisions of the Hon'ble High Courts and of the Coordinate Benches of the Tribunal to submit that the Hon'ble High Court as well as the different Benches of the Tribunal have already held that the "date of order" as mentioned in the provisions is to be taken as the "date of communication of the order". He in this respect has relied upon the decision of the Hon'ble Gujarat High Court in 'Peterplast Synthetics (P) Ltd v ACIT' (2013) 86 CCH 0314 wherein the Hon'ble High Court while interpreting the provisions of section 254(2) (un-amended) as it were in

existence during the period relevant to that case, while relying upon the other decisions of the High Court, has held that the "date of order" would mean and must be construed as meaning the "date of communication or knowledge, actual or constructive, of the order sought to be reviewed". The Hon'ble Gujarat High Court, therefore, held that since the rectification application had been submitted within the period of four years (limitation period as prescribed before amendment) from the date of actual receipt of the judgment and order and, therefore, the same was within the period of limitation as per section 254(2) of the I. Tax Act. The Ld. Counsel has further relied upon the decision of the Hon'ble Gujarat High Court in the case of 'Liladhar T Khushlani Vs. Commissioner of Customs' in Tax Appeal No. 915 of 2016 vide order dated 25.01.2017 wherein the Hon'ble High Court while interpreting the identical provisions to the Central Excise Act 1944 has held that the period of limitation to file the rectification application shall commence from the date of dispatch of the order and not from the date of actual passing of the order. The Ld. Counsel has, therefore, submitted that either the date of commencement of limitation be taken as the date of receipt of the order by the assessee or the date of dispatch of order by the Registry; the application of the assessee would fall within the limitation period, as prescribed.

4. The Ld. DR, on the other hand, has submitted that the original order was pronounced in the Open Court and the assessee was in the knowledge of the order. He has made stress on the words "communication or knowledge, actual or constructive of the order sought to be reviewed" to say that the assessee had actual as well as constructive knowledge of the order passed by the Tribunal. He, in this respect, has relied upon the

impugned order to say that the order was pronounced in open court in the presence of the parties.

5. We have considered the rival submissions. The assessee has moved an application for recalling of the order pleading that a mistake apparent on the record has occurred in the impugned order. The mistake can be due to wrong appreciation of facts or wrong application of law; it may either be due to mistaken belief of the parties to the litigation or wrong application of law by the adjudicating authority. So far as the issue relating to the date of commencement of the limitation for filing the rectification application is concerned, the position is settled by the various Courts of law including that of the Hon'ble Gujarat High Court in 'Peaterplast Synthetics (P) Ltd Vs. CIT' (supra) and 'Liladhar T Khushlani Vs. Commissioner of Customs' (supra), holding that the relevant date has to be taken as the date of dispatch / receipt of the copy of the order and not the date of passing of the order. Since as on both the dates i.e. date of dispatch as well as dated of receipt, the application of the assessee would be deemed to be filed within the limitation period, hence, we leave the question of law open as to whether the date of dispatch of order or the date of receipt of copy of the order by the concerned party is to be taken as date of commencement of limitation period.

6. So far as the arguments of the Ld. DR that the date of communication is to be taken either as 'communication or knowledge, actual or constructive' of the order sought to be reviewed' is concerned, we are guided by the decision of the full Bench of the Hon'ble Supreme Court in the case of 'State of Punjab Vs. Mst.Qaisar Jehan Begum and Another' AIR 1963 SC 1604 : (1964) 1 SCR 971. (Full Bench), wherein the Hon'ble Supreme Court while considering the words 'knowledge either

actually or constructively' has held that the knowledge of award does not mean a mere knowledge of the fact that the award has been made. The knowledge must relate to the essential contents of the award.

7. The said proposition of law can be safely applied to the case in hand. Though the operative part of the order may be in the knowledge of the assessee, however, whether there is any mistake apparent on record in the contents of the order, it can be noticed only after going through the contents of the order. The order in this case admittedly was dispatched on 29.6.2017, even if that is taken the date of communication, the application of the assessee can be safely said to have been filed within the period of limitation. This issue is accordingly decided in favour of the assessee

8. Now coming to the issue of mistake apparent on record, and thereby pleading for recalling & necessary amendment in the orders of the Tribunal passed in above captioned appeals which was dismissed by the Tribunal in turn relying upon the decision of the Division Bench of the ITAT in the case of 'Hycron Electronics Vs. ITO' in 798/Chd/2012.

9. The learned AR for the assessee has submitted that the issue involved in the appeals relate to deduction claimed u/s 80IC of the Act to the extent of 100% on account of substantial expansion carried out by the assessee. That the said decision is now covered by the subsequent decision of Hon'ble Jurisdictional High Court of Himachal Pradesh in M/s Stovekraft India Vs. CIT in ITA No. 20/2015 dated 28.11.2017, wherein, the decision of the Tribunal in the case of Hycron (supra) has been set aside. The Ld. DR is fair enough to concede this factual matrix. It is settled law that in the case of law declared / any interpretation made by the higher court, it is to be taken as such interpretation was the right interpretation of those provisions as on the date of their incorporation in

the statute. In view of this, any contrary interpretation made by this Tribunal would constitute mistake apparent on record.

10. In view of this, we find merit in the applications and, therefore, we recall the orders of the Tribunal dated 24.5.2017 & 19.5.2017 in the above captioned appeals and restore the appeals to its original position. Since the issue involved in both the appeals is squarely covered by the decision of the jurisdiction High Court of Himachal Pradesh in the case of 'Stovekraft India Vs. CIT' '(supra), hence, both the appeals are decided vide our separate order of even date.

3. In the result, both the Miscellaneous Applications filed by the assessee are allowed.

Sd/-	Sd/-
(ANNAPURNA GUPTA)	**(SANJAY GARG)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 27.04.2018
Rkk

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT*
4. *The CIT(A)*
5. *The DR*