IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT
[conducted through E court at Ahmedabad]

[Coram: Pramod Kumar AM and S S Godara JM]

I.T.A. No.: 472/RJT/2014
Assessment year: 2008-09

Assistant Commissioner of Income Tax
Circle 1, Jamnagar ***……..Appellant***

Vs.

Rupam Impex ***……Respondent***
B 8, GIDC Phase 1, STU,
Jamnagar [PAN: AAJFR3639M]

Appearances by:
Yogesh Pandey and C S Anjaria, *for the appellant*
Vimal Desai, *for the respondent*

Date of concluding the hearing :January 19,2016
Date of pronouncing the order :January 21,2016

ORDER

Per Pramod Kumar:

1. By way of this appeal, the Assessing Officer has challenged correctness of the order dated 12th December 2013 passed by the CIT(A), in the matter of rectification under section 154 r.w.s. 143(3) of the Income Tax Act, 1961, for the assessment year 2008-09.

2. Grievances of the Assessing Officer are as follows:

> **1. The learned CIT(A) erred in law and on facts by directing the AO to rectify the mistakes under section 154**
>
> **2. That on the facts and in the circumstances of the case, the learned CIT(A) ought to have upheld the border of the Assessing Officer**

3. Briefly stated, the relevant material facts are like this. In the assessment order dated 26th July 2010, passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961, the Assessing Officer computed assessed income of the assessee as follows:

5. With the above remarks *(which are not relevant in the context of this appeal)***, assessee's total income is computed as follows:**

Net profit as per P&L account		**1,97,33,895**
Add:		
Income Tax	**1,02,32,290**	
Depreciation as per books	**32,40,466**	
Fringe benefit	**41,640**	**1,35,14,396**
		3,32,48,291
Less: Depreciation as allowable as per Income Tax Act		**(-) 3,20,281**
Total taxable income		**3,29,28,010**

[Rupees three crore twenty nine lakh twenty eight thousand ten only]

4. The assessee then moved a rectification petition pointing out that the net profit as per profit and loss account, which is starting point of the computation of taxable income, is Rs 1,94,33,895. It was also pointed out that the depreciation as per books of accounts, which is required to be added back to the profit as per profit an dloss account, is Rs 3,20,466 and not Rs 32,40,466. The Assessing Officer was, accordingly, urged to rectify the mistake apparent on record. However, the Assessing Officer rejected this request primarily on the ground that the assessee himself has computed the income on the basis of these figures. He, however, did not dispute that the factual contentions of the assessee with respect to the profit and depreciation figures are correct. In this regard, following observations of the Assessing Officer may be referred to:

> **"In this context, it is seen from the copies of audited profit and loss account for the AY 2008-09 that the net profit is Rs 1,94,33,895. It is also seen that depreciation as reflected in the copies of the audited profit and loss account is Rs 3,20,466**
>
> **However, it is further seen that the income finally assessed by the AO is the same as returned by the assessee itself, vide its return of income for the assessment year 2008-09. The computation forming part of the assessment order is also found to be identical to the computation of income for the AY 2008-09 as filed by the assessee during the assessment proceedings."**

5. Aggrieved, assessee carried the matter in appeal before the CIT(A) who reversed the action of the Assessing Officer. While doing so, learned CIT(A) observed, *inter alia,* as follows:

> **".....In my considered opinion, the AO has completely erred by not rectifying such mistakes which were clearly apparent very well from records in appellant's case. The mistakes were so glaring that the AO was not even required to look or verify any other document. If such kind of typographical or clerical mistakes are not rectified, the provisions of Section 154 would become redundant. Considering the totality of facts and the above discussion, the AO is not correct in refusing the rectification of the appellant, and, I, therefore, direct the AO to rectify the mistakes under section 154..."**

6. The matter does not end here. The Assessing Officer is not satisfied with the relief so granted by the CIT(A) and is in appeal before us.

7. When this appeal was called out for hearing, Shri Anjaria, learned Departmental Representative, still proceeded with justifying the stand of the Assessing Officer. When we put it to him as to how could the Assessing Officer on one hand agree that the figures set out in his computation of taxable income in the assessment order are wrong, and yet decline to adopt the correct figures, he had nothing much to say except to play reliance on the stand of the Assessing Officer. He said that the Assessing Officer should not be faulted for accepting the claim made by the asseessee. Shri Pandey, learned Commissioner (DR), goes a step further. He submits that pointing out the correct figures of profit and depreciation amounts to a new claim by the assessee which cannot be made except through a revised return. He submits that since the claim of the assessee, as made in the income tax return, was accepted and the assessee could not have made a fresh claim, without a revised return, the Assessing Officer was justified in not adopting the figures of the profit and depreciation as per profit and loss account on record. He vehemently supports and justifies the stand of the Assessing Officer. He submits that the CIT(A) committed a grave error in granting the impugned relief.

8. We are appalled by the arguments of the learned Departmental Representatives, even as we understand the compulsions of unenviable task, that they have, in pursing this appeal. Here is a case in which the figures set out in the assessment order are admittedly incorrect. What is stated to the profit as per profit and loss account is not the profit as per the profit and loss account. It is profit as stated to be, in the computation of income by the assessee- though wrongly, the profit as per profit and loss account, but clearly at variance with the profit and loss account on the assessment record. Clearly, the Assessing Officer did not even apply his mind to the material on record. He did a simple cut and paste job from the statement of taxable income filed by the assessee. The starting point of his computation of income was incorrect, he accepts it but still fights shy of giving effect to the natural corollaries of discovering this mistake. If there is a mistake, it is to be rectified. There cannot be any justification of Assessing Officer's inertia in this respect. The same is the position with respect to the depreciation figure, and the same is the stand of the Assessing Officer.

9. A lot of emphasis is placed on the fact that the mistake was committed by the assessee himself which has resulted in the error creeping in the assessment order as well. Instead of being apologetic about the complete non application of mind to the facts and making a mockery of the scrutiny assessment proceeding itself, the Assessing Officer has justified the mistake on record on the ground that it is attributed to the assessee. The income tax proceedings are not adversarial proceedings. As to who is responsible for the mistake is not material for the purpose of proceedings under section 154; what is material is that there is a mistake- a mistake which is clear, glaring and which is incapable of two views being taken. The fact that mistake has occurred is beyond doubt. The fact that it is attributed to the error of the assessee does not obliterate the fact of mistake or legal remedies for a mistake having crept in. It is only elementary that the income liable to be taxed has to be worked out in accordance with the law as in force. In this process, it is not open to the Revenue authorities to take advantage of mistakes committed by the assessee. Tax cannot be levied on an assessee at a higher amount or at a higher rate merely because the assessee, under a mistaken belief or due to an error, offered the income for taxation at that amount or that rate. It can only be levied when it is authorised by the law, as is the mandate of Art. 265 of the Constitution of India. A sense of fairplay by the field officers towards the taxpayers is not an act of benevolence by the field officers but it is call of duty in a socially accountable governance. If authority is needed even for justifying this approach to the taxpayers, one need not look beyond the circulars issued by the CBDT itself. In Circular No. 14, which has been taken note of by the Hon'ble Bombay High Court in the case of **Dattatraya Gopal Bhotte vs. CIT [(1984) 150 ITR 460 (Bom)],** the Board has these words of advice for the field officers :

> **".....Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist taxpayer in every reasonable way, particularly in the matter of claiming and securing any relief and in this regard the officers should take initiative in guiding the taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would in the long run benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Government....."**

10. It is heartening to note that the CBDT has given such humane guidance to the field officers. The best thing that the field officers can do to enhance the respect for and trust in the Department, is to follow these valuable words of advice in letter and in spirit, but then, sometime overzealous, even if well meaning, efforts to collect the revenue end up sacrificing these humane niceties on the way, and thus derail the efforts of the CBDT to earn taxpayer's confidence and trust. That must not be allowed to happen. An action or inaction which erodes any taxpayer's faith in Indian tax and judicial system does not do any of us any good. The well meaning advice given by the

CBDT must be implemented to the fullest extent. As to what is binding nature of this advice, we may only refer to s. 119 of the Act and Hon'ble Supreme Court's judgment in the case of **UCO Bank vs. CIT [(1999) 237 ITR 889 (SC)].** Hon'ble Supreme Court has time and again held that the circulars of the CBDT are legally binding on the Revenue and that this binding character attaches to the circular even if they be found not in accordance with the correct interpretation of section or they depart or deviate from such construction. The advice contained in the circular, which is reproduced above, is also legally binding on all the field officers. It is indeed a pity that even after such a pragmatic approach being conveyed to the field officers in no uncertain terms, a pedantic approach, as adopted by the Assessing Officer, is adopted in practice. It does not end here. When the first appellate authority gives relief in such deserving cases, the agony of the taxpayer is not allowed to come to an end. The appeals against the relief granted by the first appellate authority are filed as a matter of routine. One can understand the young Assessing Officers being overzealous in their approach and making such mistakes, something is needed to be done to ensure that the appeals are not filed before the higher forums as a matter of routine. Only if the field authorities are little more cautious, and stay away from such pedantic approach, such thoughtful initiatives and pragmatic approach of the Government, at the highest level, will earn more goodwill and greater trust at the ground level. As we are dismissing this appeal, and confirming the relief granted by the learned CIT(A), we make it clear that while we are not awarding any costs in this case, we must put in a word of caution here. There has to be proper mechanism to ensure that such frivolous appeals are not filed. However, if that does not happen and these frivolous appeals continue to clog the system, it is only a matter of time that the Tribunal starts awarding costs, in such cases, as a measure to deterrence to the officers concerned. We hope that does not happen.

11. In the result, the appeal is dismissed. Pronounced in the open court today on 21st day of January, 2016

Sd/xx ***Sd/xx***
S S Godara **Pramod Kumar**
(Judicial Member) (Accountant Member)
Ahmedabad; January 21, 2016

Copies to: *(1)* *The appellant* *(2)* *The respondent*
(3) *CIT* *(4)* *CIT(A)*
(5) *The Departmental Representative* *(6)* *Guard File*

By order etc

Assistant Registrar
Income Tax Appellate Tribunal
Rajkot bench, Rajkot