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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 1500/2010

COMMISSIONER OFINCOME TAX ..... Appellant
Through: Ms. Prem Lata Bansal , Advocate

versus

JINDAL STAINLESS LIMITED ..... Respondent
Through: Ms. Kavita Jha, Advocate.

% Reserved on: 30th September, 2010.
Date of Decision: 6th October, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest?Yes

MANMOHAN, J

1. The present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity, "Act") challenging the order dated 22nd June, 2009 passed by the Income Tax Appellate Tribunal (in short "Tribunal") in ITA No. 1847/Del/2008, for the Assessment Year 2004-2005.

2. Briefly stated the relevant facts of the present case are that the respondent-assessee filed a return declaring income of ₹ 71.43 crores. However, the assessment was completed under Section 143(3)/153A of

the Act wherein respondent-assessee's income was computed at ₹ 83.06 crores. On 10th April, 2007, the Assessing Officer (in short, "AO") reduced the income to ₹ 79.81 crores under Section 154 of the Act.

3. Subsequently, as the AO was of the opinion that the respondent-assessee had not added a sum of ₹ 39.28 lacs being provision for doubtful debts and advances/bad debts to the income, he issued a fresh notice under Section 154 of the Act. Since the respondent-assessee did not respond to the said notice, another notice dated 13th July, 2007 was issued.

4. In reply to the aforesaid notice, respondent-assessee submitted that out of ₹ 39.28 lacs, amount of ₹ 38,59,820/- were bad debts and a sum of ₹ 68,039/- only was towards provision. However, the AO added the entire amount of ₹ 39.28 lacs to the income of the respondent-assessee under Section 154 of the Act.

5. Though the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] dismissed the respondent-assessee's appeal, the Tribunal deleted the addition of ₹ 39.28 lacs made by the AO under Section 154 of the Act on the ground that AO's action was on a debatable issue and jurisdiction under Section 154 of the Act could have been invoked only to rectify a mistake apparent from the record—which was not the present case. The relevant observations of the Tribunal are reproduced hereinbelow:

"6. After hearing both the sides and going through the records, we hold that the provisions of S. 154 of the I.T. Act, 1961 can be invoked when there is a mistake and the mistake is apparent from records. When the mistake was not apparent from the records and there can be conflict of views and there are possibility of more than one view, the AO cannot justify the rectification as a mistake apparent from the record. In the present case the AO has made an order u/s 143(3) of the I.T. Act on 19.7.2007. Assessee complied with the queries made during the assessment proceedings. Nothing has been said in respect of this bad debt/provision for the bad debt in this assessment order u/s 143(3). A decision on a debatable point of law or failure to apply the law to a set of facts which remains to be investigated cannot be corrected by way of rectification u/s 154 of the I.T. Act, 1961. This section does not empower the AO to investigate a particular point which he had apparently missed at the time of finalization of the order u/s 143(3) of the Act. The AO claimed that the assessee was provided with an opportunity before rectification appears to be irrelevant to the facts of the case when there was no mistake apparent from the record which can justify the action of the AO. The AO's jurisdiction u/s 154 of the I.T. Act is only limited to rectify the mistake apparent from the records. The mistake must be apparent on the face of the records. We are of the considered view that the AO's action u/s 154 of the I.T. Act on debatable issue and CIT(A)'s confirmation of the AO's action does not appear to be good in the eye of law. In view of these facts, we set aside the order of AO as well as of the CIT(A) and direct to allow the claim of the assessee. Since we have granted relief to the assessee on ground nos. 1, 2 and 3 there is no need to adjudicate on remaining ground taken by assessee. In the result, the appeal of assesses is allowed."

6. Ms. Prem Lata Bansal, learned counsel for revenue submitted that the Tribunal had erred in law in deleting the addition of ₹ 39.28 lacs made by the AO on account of provision for doubtful debts under Section 154 of the Act. She submitted that the AO had rightly invoked the jurisdiction under Section 154 of the Act as there was a mistake apparent from the record and the AO's action was not a debatable issue.

7. Though neither the notices dated 05th February, 2007 and 13th July, 2007 under Section 154 of the Act nor the AO's order dated 19thJuly, 2007 have been placed on record, yet from the CIT(A)'s and Tribunal's order it is apparent that the AO had added an amount of ₹38,59,820/- on the ground that doubtful debts and advances were not allowable under Section 36(1)(vii) of the Act. However, the Supreme Court recently in the case of ***T.R.F. Ltd. Vs. Commissioner of Income Tax (2010) 323 ITR 397*** (SC) has held that after 01st April, 1989, it is not necessary for the assessee to establish under Section 36(1)(vii) that the debt had become irrecoverable. To claim deduction under Section 36(1)(vii), it was enough if the bad debt is written off by the assessee as irrecoverable in its accounts. Consequently, in view of the aforesaid judgment and assessee's stand, deduction under Section 36(1)(vii) was certainly a debatable issue.

8. We are also in agreement with the view of the Tribunal that neither a debatable point of law nor failure to apply the correct law to a set of facts can be corrected by way of a rectification under Section 154 of the Act. In fact, the Supreme Court in the case of ***MEPCO Industries Ltd. Vs. Commissioner of Income Tax and Another (2009) 319 ITR 208 (SC)*** has held that the right to rectify mistakes under Section 154 of the Act cannot be invoked in case of change of opinion. A rectifiable mistake is a mistake which is obvious and not something which has to be established by a long drawn process of reasoning or where two opinions are possible.

9. Consequently, the Tribunal in the present case has rightly held that a decision on a debatable point of law cannot be treated as a mistake apparent from the record.

10. Accordingly, the present appeal being devoid of merit, is dismissed.

MANMOHAN, J

CHIEF JUSTICE

OCTOBER 06, 2010
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