CIT Vs Tony Electronics Delhi High Court.

Limitation period u/s 154 (7) for rectification begins from date of appeal order

S. 154 (7) provides that a rectification order can be passed within four years "*from the end of the financial year in which the order sought to be amended was passed*". The AO passed an assessment order u/s 143 (3) on **24.11.1998** in which he committed the mistake of reducing the depreciation instead of adding to the income resulting in double deduction. The assessee went up in appeal ***on other issues*** to the CIT (A) who decided the appeal on **28.6.2004**. The AO gave effect to the CIT (A)'s order vide order dated **23.7.2004**. The AO thereafter passed an order u/s 154 dated **26.4.2006** by which he rectified the mistake committed in the order dated 24.11.1998. On the question whether the said order was barred by limitation, the Tribunal decided the issue in favour of the assessee on the ground that the rectification order was passed beyond four years. On appeal by the department, HELD reversing the Tribunal:

(1) Under the **Doctrine of Merger**, once an appeal against the order passed by an authority is preferred and is decided by the appellate authority, the order of the said authority merges into the order of the appellate authority. **With this merger, the order of the original authority ceases to exist and the order of the appellate authority prevails, in which the order of the original authority is merged**. For all intent and purposes, it is the order of the appellate authority that has to be seen;

(2) The word "order" in s. 154 (7) has not been qualified in any way and it does not mean only the original order but includes the appeal – effect order.

(3) On facts, **the assessment order dated 24.11.1998 merged in the CIT (A)'s order dated on 28.6.2004**. This date had to be considered for computing the limitation period of four years. ***The fact that the error sought to be rectified occurred in the original assessment order and was not subject matter of appeal is irrelevant***.

Note: In **Poonjabhai Vanmalidas** 114 ITR 38 (Guj) and **Sakseria Cotton** 124 ITR 570 (Bom) it was held that if a part of the order of the AO which was sought to be rectified was untouched by the CIT (A), then the limitation for rectifying that part of the order would commence from the date of the original order because the "merger" was only with respect to issues adjudicated by the CIT (A). Similarly, in **Uttam Chand** 245 ITR 838 (Del), it was held that the doctrine of merger does not apply to matters which are not before the CIT (A).