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

% **DECIDED ON: 06.05.2014**

\+ ITA 199/2014

PAWAN KUMAR AGGARWAL ..... Appellant
Through: Mr. Ved Jain with
Mr. Pranjal, Advocates.

versus

COMMISSIONER OF INCOME TAX ..... Respondent
Through: Mr. Rohit Madan, Sr. Standing Counsel
with Mr. Akash Vajpai, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE VIBHU BAKHRU

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

ADMIT.

1. Issue notice. Mr. Rohit Madan, Sr. Standing Counsel accepts notice on behalf of the respondent.

2. The question of law which arises for consideration is, *"whether the ITAT fell into error in rejecting the assessee's claim for credit of Securities Transaction Tax (STT), proof of which was concededly attached to the return."*

3. The relevant facts are that the assessee reported a total income of ₹34.56 lakhs for AY 2008-09. The income tax payable including

surcharge and education cess was ₹1,16,950/-. In the computation of income, the assessee failed to disclose the STT paid to the tune of ₹18,93,867/-. Instead of disclosing it as STT paid, the amount was erroneously mentioned as TDS. The AO rejected the assessee's application, in the form of letter of 22.11.2012, whereby the assessee requested rectification of the intimation. The AO's order of 16.1.2013 was unsuccessfully appealed. The assessee further appealed to the ITAT which rejected its contentions, by the impugned order. The ITAT was of the opinion that the assessee mentioned that the income arising out of transaction chargeable to STT chargeable under the head 'profits and gains' of business or profession' included in the gross income was shown to be NIL and that the tax payable on that amount at an average amount of tax was also NIL and consequently the rebate allowable under Section 88E was likewise zero. The ITAT, therefore, reasoned as follows: -

> *"That when in the return of income the assessee himself has mentioned that the income arising from the transaction chargeable to securities transaction tax is nil and the rebate allowable under Section 88E is nil, then, the Assessing Officer cannot be said to have committed any error in the intimation under Section 143(1) in not allowing rebate under Section 88E. That under Section 154, the jurisdiction of the Assessing Officer is to rectify the mistake apparent from the record. Under Section 143(1), the Assessing Officer has processed the return as furnished by the assessee. Therefore, the mistake is to be seen in the light of the return filed by the assessee. If the assessee has committed any mistake in filling the return of income, the same cannot be rectified by the Assessing Officer under Section 154. The assessee contended that the STT paid by the assessee was filled in the wrong column, i.e., in the column of TDS. However, we find that from the details as furnished in*

the column of TDS, it cannot be inferred by the Assessing Officer that it is STT. Moreover, as we have already mentioned that for the purpose of Section 88E, mere payment of STT would not entitle the assessee to claim the rebate. The assessee would be entitled to rebate only if the total income of the assessee included the income arising from the taxable securities transactions. In the return of income, the assessee himself has mentioned the income arising from transactions chargeable to securities transaction tax to be nil. In the computation of income also, there is no mention about any such income. The assessee has claimed to have furnished the certificate of STT collected by Adroit Financial Services Pvt. Ltd. However, the certificate only mentions the transaction entered into by the assessee but it nowhere mentions the income arising from such transaction."

4. It is urged by the learned counsel that the Tribunal fell into an error in overlooking Section 154(1)(b) of the Income Tax Act, 1961, which allows the amendment of even intimation or deemed intimation under Section 143 (1) of the Act. The counsel also relied upon Section 154 (1A) of the Act to say that even after decision in any proceeding by way of an appeal or revision, it is upon the assessee or the party concerned to seek recourse to Section 154 (1). He relied upon the ruling reported as *Commissioner of Income Tax v. Sam Global Securities Ltd.*, 2013 (9) TMI 876 (Delhi).

5. The learned counsel for the Revenue urged that this Court should not interfere with the findings of the Tribunal since the assessee was at fault and had in the income tax return form at the appropriate place mentioned the TDS to be ₹18,93,867/- which was found to be inaccurate. In these circumstances, there was no question of any error or mistake on the part of the AO which could be

rectified.

6. Section 154 to the extent it is relevant is extracted below: -

> ***"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.]]*
> *[(1A) 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, 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.]*
> *(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*
> *(b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee, and where the authority concerned is the [***] [Commissioner (Appeals)], by the [Assessing] Officer also."*

It is apparent from the bare reading of the above provision that the power of rectification extends to amendment of an intimation or deemed intimation under Section 143. This power enures even after 'the matter' has been *considered and decided* in any proceeding by way of appeal or revision. Necessarily, this power extends even at the stage of the appeal and the further appeal to the ITAT. Even after such decision, it is open to the AO to amend the intimation under Section 143 (1) if the circumstances so warrant. We are wholly in

agreement with the decision in *Sam Global's* matter (supra) that the technicalities in the given circumstances of the case ought not to obscure the justice. The justice demands, in the peculiar facts of the case, that there is no impediment to relief. That appears to have been overlooked in entirety by the lower authorities and the Tribunal had failed to notice that the controlling expression in Section 154 is not "an error" which is somewhat coloured by the exercise of power by the authorities. Instead, the controlling expression is "any mistake" which has wider connotation and includes mistakes committed by the parties also.

7. In view of the above discussion, the question of law framed has to be answered in favour of the assessee and against the Revenue. The appeal is consequently allowed but without any order as to costs.

S. RAVINDRA BHAT
(JUDGE)

VIBHU BAKHRU
(JUDGE)

MAY 06, 2014
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