

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, CHANDIGARH**

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA No. 344/Chd/2016
(Assessment Year : 2007-08)

M/s Bansal Rice Mills,
Ismailabad,
Kurukshetra.

PAN: AABEB9095K
(Appellant)

Vs.

The Income Tax Officer,
Ward -2,
Kurukshetra.

(Respondent)

Appellant by : Shri Tej Mohan Singh
Respondent by : Shri Sushil Kumar, CIT DR

Date of hearing : 18.07.2016

Date of Pronouncement : 20.07.2016

O R D E R

This appeal by the assessee has been directed against the order of learned Commissioner of Income Tax (Appeals)-1, Gurgaon dated 7.3.2016 for assessment year 2007-08 on the following grounds :

- “1. *The Ld. Commissioner of Income Tax (Appeals) has erred in law in upholding the invocation of the provisions of Section 154 of the Act by the assessing officer when in fact as there is no mistake apparent from record warranting action under section 154 of the Act which is illegal, arbitrary without jurisdiction & as such unjustified.*
2. *That whether set off any loss or otherwise is to be allowed against surrendered income is clearly a debatable issue*

warranting extensive debate and as such the order passed under Section 154 is illegal, arbitrary & unjustified.

3. *That without prejudice to the above, the Assessing Officer has erred in law as well as on facts in assessing the income at Rs.40,13,510/- as against originally assessed at Rs.29,54,357/- resulting in additional demand of tax at Rs.4,74,160/- which is illegal, arbitrary and unjustified.*
4. *That the order of the Ld. Commissioner of Income Tax (Appeals) is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable.”*

3. The brief facts are that after a survey operation under section 133A(1) of the Income Tax Act, 1961 (in short ‘the Act’) was conducted at the business premises of the assessee firm on 13.03.2007. The Assessing Officer vide order dated 30.12.2009 made the original assessment at Rs.29,54,357/- against the returned income of Rs.15,060/-. In the course of survey proceedings, the assessee made a disclosure of additional income of Rs.38 lacs. The additional income disclosed in the survey was related to the stock found at the business premises as well as documents found in the course of survey operations. It was noticed that the disclosure of additional income was made vide letter dated 13.03.2007, which is reproduced as under: -

“ Survey under section 133 A was conducted on 13.03.2007 at business premises mentioned above. Inventory of stock was prepared. During survey discrepancies in stock and cash documents was found. To purchase peace of mind and to avoid further litigation and for the benefit of business, the firm has offered an additional income of Rs. 38 lacs for the

F.Y. 2006-07 relevant to AY 2007-08. A cheque of Rs.12,76,800/- is enclosed herewith for payment of advance tax by 15.03.2007.

The surrender of above income is in addition to income of the firm. The surrender is voluntarily and without any pressure and without any penal action under section 271(1)(c)”

4. The Assessing Officer in the assessment order noticed that the assessee has declared differential GP Rate from 1.04.2006 to 13.03.2007 (Date of Survey) @ of 4.63%, whereas from 14.03.2007 to 31.03.2007 gross loss of Rs.22,07,240/- on the turn over of Rs.70,21,059/- in this period. The Assessing Officer examined the complete details in this regard and came to a conclusion in Paras 6 to 17 of the order that the assessee is not entitled to adjustment of loss from the business against the income disclosed in the course of survey. The relevant paragraphs of the order are reproduced here under :-

“6. The assessee has returned gross profit of Rs.13,15,516/- on sales of Rs.2,84,06,214/-, giving GP rate of 4.63%, in the first period from 01.04.2006 to 13.03.2007 i.e. period up to the date of survey, and gross loss of Rs.22,07,240/- on sales of Rs.70,21,059/- from 14.03.2007 to 31.03.2007. Thus it is seen that there is vast difference between the gross profit of the former accounting period and gross loss of the later accounting period. Thus there is gross loss Rs. 22,07,240/- on sales of Rs.70,21,059/- for the entire period of 01.04.2006 to 31.03.2007, as against gross profit of Rs.13,15,516/- against sales of Rs. 2,84,06,214/- giving a GP rate of 4.63% in the immediately preceding year i.e. AY 2006-07. Thus it is seen the sales have gone down considerably as compared to last year and GP of first period has gone up, but by showing loss for the second period there is loss. This is for the post survey period that loss has been shown to cover the surrender made at the time of survey.

7. The assessee has surrendered an amount of 38 lac at the time of survey on account of excess stock. The correctness and genuineness of the books. As of accounts of the assessee Huge difference between the gross profit/loss of the said

two separate account accounting periods explicitly shows that the books of account the assessee cannot be termed as reliable. Moreover the defects pointed out as per letter dated 22.12.2009 and considering the reply of the assessee and further findings, as discussed above, it is held that the books of accounts are neither reliable nor genuine. These are incorrect and the actual gross profit cannot be deduced from these book of account because of the aforesaid defects. Hence, Manufacturing/trading results of the assessee are hereby rejected by invoking provisions of section 145(2) of the income Tax Act, 1961.

8. The Hon'ble Supreme Court in the case of CIT Vs. British Paints Ltd. 188 ITR 44 has held that it is not right but the duty of the AO to consider whether or not the books of accounts disclose the true state of accounts and correct income can be deduced therefrom. It is incorrect to say that the Officer is bound to accept, the system of accounting regularly employed by the assessee.

Reliance is placed on the following decisions:

<i>Dhodi Ram Dull Chand Vs. CIT</i>	81 ITR 609 (Bombay)
<i>Central Automobiles Vs. State</i>	35 STC 478 (1975) (Kerela)
<i>CIT Vs. Pareek Bros.</i>	167 ITR 344 Patna
<i>Mulji Udhavji Vs. CIT</i>	145 ITR 575(MP)
<i>Acton Electrical Vs. CIT</i>	258 ITR 158(Delhi)
<i>Awadesh Partap Singh Abdul Rehman Bros. Vs. CIT</i>	76 Taxman 106(AU)
<i>Kishin Chand Chela Ram Vs. CIT</i>	114 ITR 671, 654(Bom)
<i>S.N. Namasivayam Chettiar Vs. CIT</i>	38 ITR 579(SC)

9. Keeping in view the above and that the assessee has declared GP rate of 4.63% in first period i.e. 01.04.2006 to 31.03.2007. The same rate, of gross profit is taken for the whole of year. By applying gross profit rate of 4.63% on sale of Rs. 35427273/-, the gross profit works out at Rs.1640283/- as against loss of Rs.891724 for the entire period. Hence trading addition of Rs.2532007/- (1640283/- +891724/-) is made to the assessee's declared income.

10. I am satisfied that the assessee has concealed the particulars/furnished the inaccurate particulars of its income of Rs.2532007/-. Hence penalty proceedings u/s 271(1)(c) of the Income Tax Act are initiated separately.

11. The assessee, vide this office letter dated 22.12.2009, was asked to explain:-

Please explain as to why the excess stock found at Rs.3800000/- at your premises at the time of survey should not be assessed to tax u/s 69 of the Income Tax Act.

12. The reply of the assessee in this regard is as under :-

Sir the surrender of Rs. 38 lacs was on the basis of paddy and rice etc found in the rice mill more than actual stock as per books. Sir, there items were purchased in the month of Feb. & March as is clear from the kanda parchies found and impounded during the survey. These bills or purchase of kanda parchi was to be entered by the accountant in books. But was upto date upto date of survey so the same was surrendered to purchase peace of mind and to reduce the litigation subject to no penal action under any section of Income Tax Act, if we reject the books than it is breach of contract as per letter of surrender. So your goodself is humbly requested not to apply the provision of Section 145(3) of Income Tax Act.

13. In his statement, recorded during the course of survey, Sh. Satish Kumar, partner of the firm has stated specifically that there was no stock in the mill, whose bill is yet to be received. Even if the bills or purchase of kanda parchi was to be entered by the accountant in books these should have been entered during the course of survey. There was no need to surrender the huge amount of Rs.38 lac, simply on the ground that some bills were not to be entered. A sum of Rs.38, 00,000/- has been surrendered on account of excess stock. It clearly shows that the books of accounts are neither reliable nor genuine.

14. The assessee has credited additional income of Rs.38 lac in his Profit & Loss account. The sum of Rs. 38 lac is assessable as deemed income under section 69. This has been explicitly held by the Hon'ble Gujarat High Court in the case of *Fakir Mohd. Haji Hasan* [120 Taxman 11&247 ITR 290] (2002) that section 69, 69A, 69B, and 69C are deeming provisions and no deduction under the other sections is permitted. The classification of heads of income is governed by u/s 14 of the Income Tax Act, 1961. The income determined u/s 69, 69 A, 69B & 69C are to be treated separately as 'deemed income' and such deemed income is neither income from salary nor house property nor profit or gain of business or profession or capital gain and nor it is income from other sources, but is the case of the specific provisions of

section 69 having regard to the above factual position, no further deduction or set off any kind is applicable to such income assessed/assessable u/s 69, 69A, 69B & 69C of the Act.

15. In the case of the assessee there is no dispute that income has been surrendered on account of unaccounted stock, which is assessable u/s 69 of the Act. It is also seen from the facts if there is no evidence on record either during the assessment proceeding or during the survey indicating the source of the said unaccounted stock was explained. There is no submission regarding any particular purchase or sale transactions which was business in nature, which generated the said unaccounted. Its being so, having regard to the ratio of the decision of Hon'ble Gujarat High Court which is clear on the relevant point that income having been assessed i .. 69 of the Act, no set off of any kind of deduction of any kind is admissible against the said income. Hence additional income of Rs.38 lac credited in the P& L account is assessable as deemed income u/s 69.

16. Accordingly additional income of Rs.38 lac is assessed as deemed income under section 69, since the assessee has not been able to explain the source of unaccounted stock or unaccounted cash or unaccounted investment with supportive evidence either at the time of survey or during the course of assessment proceedings.

17. I am satisfied that the assessee has concealed the particulars/furnished the inaccurate particulars of its income of Rs.38,00,000/-. Hence penalty proceedings u/s 271(1) (c) of the Income tax Act, 1961 are initiated separately."

5. The Assessing Officer passing the aforesaid order gave effect to the aforesaid finding by the following computation of the income in the assessment order:-

<i>Gross profit as discussed on page 12</i>	<i>16,40,283/-</i>
<i>Add: other income as per P&L account</i>	<i>18,91,427/-</i>
<i>Total</i>	<i>35,31,710/-</i>
<i>Less: Expenses claimed in P&L Account</i>	<i>47,84,640/-</i>

<i>Balance</i>		<i>(-)12,52,930/-</i>
----------------	--	-----------------------

Add :

Income u/s 69 as discussed above

<i>Page No 14</i>	<i>38,00,000/-</i>	
-------------------	--------------------	--

<i>Page No.10</i>	<i>1,23,027/-</i>	<i>39,23,027/-</i>
-------------------	-------------------	--------------------

Income u/s 69 C as discussed above

<i>Page No 9</i>	<i>8,957/-</i>	
------------------	----------------	--

<i>Page No 9</i>	<i>41,280/-</i>	
------------------	-----------------	--

<i>Page No 9</i>	<i>9,802/-</i>	
------------------	----------------	--

<i>Page No 9</i>	<i>15,000/-</i>	
------------------	-----------------	--

<i>Page No 10</i>	<i>7,745/-</i>	
-------------------	----------------	--

<i>Page No 10</i>	<i>28,309/-</i>	
-------------------	-----------------	--

<i>Page No 10</i>	<i>44,761/-</i>	
-------------------	-----------------	--

<i>Page No 10</i>	<i>8,952/-</i>	
-------------------	----------------	--

<i>Page No 10</i>	<i>43,960/-</i>	
-------------------	-----------------	--

<i>Page No 11</i>	<i>75,494/-</i>	<i>2,84,260/-</i>
-------------------	-----------------	-------------------

<i>Total assessed income</i>		<i>29,54,357/-</i>
------------------------------	--	--------------------

6. The assessee challenged assessment order dated 30.12.2009 before the CIT(Appeal), Karnal in IT No. 50/2009-10, which was decided on 30.03.2012. In this appeal, the assessee took specific grounds of appeal (Ground No. 1, 2 and 3) that the Assessing Officer was not justified in making addition under section 69 of the Act. A specific challenge was made to the fact that the Assessing Officer was not justified in not setting off the business loss against the income surrendered.

7. The CIT (Appeals) Karnal vide order dated 30.03.2012 recorded a specific finding of the fact that the assessee is not entitled to set off the deemed income.

The relevant paragraphs of the order are as under:-

“The facts in brief are that a survey action was carried out at the business premises of the appellant on 13.03.2007. During the survey, difference in stock and various loose documents were found which were impounded. The appellant declared additional income of Rs.38 lac besides the regular income declared year after year. The return of income was, however, filed declaring income of Rs. 15,060/- only, after considering the additional income declared. In other words, the appellant declared loss of Rs.37,84,940/- after excluding the additional income of Rs. 38 lac declared. The AO asked the appellant to furnish the trading account till the date of survey i.e., 01.04.2006 to 13.03.2007 and from the date of survey to the end of the financial year, i.e., 14.03.2007 to 31.03.2007. On examination thereof, the AO noted that the appellant declared GP @ 4.63% on turnover of Rs.2.84 crore in the first period i.e., till the date of survey and loss of Rs.22,07,240/- on sales of Rs.70,21,059/- in the second period i.e. from 14.03.2007 to 31.03.2007. The AO further noted that the entire expenses amounting to Rs.29,56,640/- were claimed to be paid in cash on self vouchers and not even a single voucher is from the third party. Further a number of vouchers bear thumb impressions and a number of vouchers were signed by the same person, despite issued in different names.

1.8 The appellant stated that their 14 consignments were rejected by the FCI which resulted to sale them at reduced price in the open market subsequent to the date of survey. The appellant further submitted that various expenses were paid in cash since no labour takes his labour through cheque as everyone is on day to day basis and has to run his family from the labour earned.

The submissions of the appellant are considered. As per the Trading account prepared at the time of survey, the closing stock was found as under:-

<i>Rice Grade A</i>	<i>3069.81 qtls</i>
<i>Rice Basmati</i>	<i>335.45 qtls</i>
<i>Paddy Basmati</i>	<i>52.17 qtls.</i>

On physical verification, actual stock at the time of survey was, however, found as under:

<i>Paddy Basmati</i>	<i>759.10 qtls</i>
----------------------	--------------------

<i>Paddy Muchhal</i>	<i>39.65 qtls</i>
<i>Parmal</i>	<i>6056.05 qtls</i>
<i>Rice Grade A</i>	<i>14945.65 qtls</i>
<i>Rice Bran</i>	<i>10.40 qtls.</i>
<i>Rice Broken</i>	<i>299.50 qtls</i>
<i>Paddy husk</i>	<i>1800 qtls</i>
<i>Bardana New & Old</i>	<i>1,12,035 bags</i>

The appellant declared additional income of Rs.38 lac on account of various discrepancies detected during survey including difference in stock and various papers impounded besides the fact that most of the expenses were paid to the labourers in cash, as has been discussed above and hence the genuineness thereof could not be verified. In view of these facts, case laws relied upon by the appellant are of no help being distinguishable on facts and it is held that the books of accounts and the trading results declared by the appellant are not correct/verifiable and hence rejection thereof made by the AO by invoking the proviso to section 145(3) of the Act is hereby confirmed.

1.10 As discussed above that the appellant declared GP @ 4.63% till the date of survey i.e., 01.04.2007 to 13.03.2007 as against declared loss of Rs.22,07,240/-for the second period i.e., 14.03.2007 to 31.03.2007 whereas G P. @ 3.7% was declared on turnover of Rs.4.4 crore in the last year. The appellant as such declared steep decline in GP in a short period of 18 day only i.e., in the subsequent period of survey. The appellant tried to justify the steep decline of G.P. in the garb of rejection of 14 consignment of Rice, out of the paddy milled on behalf of the FCI and the same were claimed to be sold at a reduced price subsequent to the date of survey. The appellant is not a new entrants in this trade and hence, it is difficult to appreciate that there would be so much rejection by the FCI, i.e., of 14 consignments weighing 270 qtls each, totaling to 3780 qtls and the same was after the date of survey and in a short period of 18 days only. It is also difficult to believe that the rice was so much damaged that it resulted into huge loss. The appellant has shown the value of rice Grade A weighing 3069.81 quintal at Rs. 30,69,810/- in respect of closing stock as per books on 13.3.2007 giving rate of Rs.1000/- per quintal and rice basmati weighing 335.45 qtls for Rs.6,10,519/-. i.e., @ Rs, 1820/- per qtl ., whereas sale of Rice Grade A has been shown at Rs. 64,57,964/- for 8021.88/- qtl. with sale rate of Rs. 805/- qtls. and rice basmati

weighing 335.45 qtls for Rs.3,68,955/- at sale rate of Rs.1100/- per qtl., only after the date of survey. There was no justification for selling the rice at such a lower rate.

1.11 In view of the facts discussed above, the only inference which can be drawn is that the entire exercise was carried out just to set off the additional income declared during survey. The trading results declared by the appellant are, therefore, held to be not acceptable. The GP declared in the last year is 3.7% whereas in the year under consideration upto the date of survey has been at 4.63%. In view of this fact, G.P.% 4% is held to be reasonable as against 4.63% adopted by the AO and the AO is accordingly directed to work out the gross profit of the appellant firm of the year under consideration.

1.12 Now coming to the next issue i.e., the head of income under which the additional income of Rs.38 lac declared by the appellant is to be assessed. The AO noted in para 14 of the assessment order that the additional income of Rs.38 lac was credited by the appellant in the profit and loss account but the same is to be assessed as deemed income u/s 69 of the Act, in view of the decision of the Hon'ble Gujarat High Court in the case of Fakir Mohd. Haji Hasan (247 ITR 290) wherein the Hon'ble Court has held that section 69, 69A, 69B & 69C are deeming provisions and no deduction under the other section is permitted. The AO further noted that there is no dispute that income was surrendered on account of unaccounted stock, which is assessable u/s 69 of the Act. There is no evidence on record indicating the source of the said unaccounted stock. There is no submission regarding any particular purchase or sale transactions which was of business in nature and generated the said unaccounted stock. The AO, therefore, held that additional income declared has to be assessed as deemed income u/s 69 of the Act and hence no set off of any kind or deduction of any kind is admissible against the said income.

1.13 This issue has also been considered by the jurisdictional Punjab & Haryana High Court in the case of M/s Kim Pharma (P) Ltd., Vs. CIT Panchkula & another, case No. 106 of 2011, date of order 27.04.2011. Relevant paras 5 to 7 from that order are reproduced below:-

"The point for determination in this appeal is, whether Rs.5,00,000/- which was surrendered by the assessee during the course of survey under section 133 A of the Act would form part of business income or was assessable under u/s 69A

of the Act the Assessing Officer, the CIT(A) and the Tribunal after considering the factual aspect noticed that the amount surrendered during the survey was reflected in the books of account and no source from where it was derived was declared by the assessee and, therefore, it was deemed income of the assessee under section 69A of the Act. The findings recorded by the Tribunal in this regard are as under:-

In the facts of the present case, we find that assessee during the course of survey had surrendered the income as income from other sources through a plea has been raised by the assessee that the income was surrendered as income from job work but no evidence to prove the stand of the assessee has been brought on record. The assessee had also surrendered additional income of Rs. 10 lacs in assessment year 2005-06 on account of sundry credits, repairs to building and advances to staff, which being relatable to business carried on by assessee as included as income from business, However, in respect of cash found during survey, which was not reflected in the books of account, no source as declared by the assessee and in the absence of nature of source of cash being proved: the same is not assessable as income from business. In the circumstances, we uphold the order of the CIT(A) in including the additional income as deemed Income u/s 69A of the Act and not allowing the benefit of the business losses determined against the said deemed Income. The grounds of appeal raised by the assessee are dismissed.

The Tribunal had relied upon a decision of the Gujrat High Court in Fakir Mohmed Haji Hasan v. Commissioner of Income-Tax (2001) 247 ITR 290.

In that case interpreting the scope and describing the scheme of Sections 69, 69A, 69B and 69C of the Act, it was observed:-

The scheme of section 69, 69A, and 69C of the Act, 1961, would show that in cases where the nature and source of investment made by the assessee or the nature and source of acquisition of money, bullion etc. owned by the assessee or the source of expenditure incurred by the assessee are not explained at all, or not satisfactorily explained, then the value of such investments and money or the value of articles not recorded in the books of account of the unexplained expenditure may be deemed to be the income of such assessee. It follows that the moment a satisfactory explanation is given about such nature and source by the assessee, then the source would stand disclosed and will, therefore be known

and the income would be treated under the appropriate head of income for assessment as per the provisions of the Act. However, when these provisions apply because no source is disclosed at all on the basis of which the income can be classified under one of the heads of income under section 14 of the Act, it would not be possible to classify such deemed income under any of these heads including income from other sources" which have to be sources known or explained, when the income cannot be so classified under any one of the heads of income under section 14, it follows that the question of giving any deductions under the provisions which correspond to such heads of income will not arise. If it is possible to peg the income under any one head by virtue of a satisfactory explanation being given, then these provisions of section 69, 69A, 69B, 69C will not apply, in which event, the provisions regarding deductions etc. applicable to the relevant head of income under which such income falls will automatically be attracted.

The opening words of section 14 "save as otherwise provided by this Act" clearly leave scope for deemed income" of the nature covered under the scheme of 69, 69A, 69B and 69C being treated separately, because such deemed income is not from salary, house property, profits and gains of business or profession, or capital gains, or capital gains, nor as income from other sources" because the provision of section 69, 69A, 69B and 69C unexplained investment unexplained money, bullion etc, and unexplained expenditure as deemed income where the nature and sources of investment, acquisition or expenditure, as the case may be, have not been explained or satisfactorily explained. Therefore, in these cases, the source not being known, such deemed income will not fall even under the head "Income from other sources". Therefore, the corresponding deductions which are applicable to the incomes under any of these various heads, will not be attracted in the case of deemed incomes which are covered under the provisions of sections 69, 69A, 69B and 69C of the Act in view of the scheme of those provisions.

The said decision fully applies to the facts of the present case."

1.14 In view of the direct decision on this issue of the Hon'ble Jurisdictional Punjab & Haryana High Court, it is held that the additional income of Rs.38 lac declared by the appellant during survey is to be assessed as deemed income and no set off from that income is to be allowed. Ground no. 1, 2 & 3 of appeal are as such rejected,"

8. The Assessing Officer issued a notice under section 154 of the Income Tax Act on 24.03.2014 pointing out that while giving appeal effect to the orders of CIT (Appeals), Karnal dated 30.03.2012, a mistake occurred by which business set off was inadvertently allowed against the income surrendered the said mistake was proposed to be rectified by recomputing the income of the assessee. In these proceedings, the assessee raised contentions, which were considered and the Assessing Officer passed rectification order disallowing the set off business loss against the income surrendered.

9. The assessee challenged the order under section 154 of the Act before the CIT (Appeals). The written submissions of the assessee are reproduced in the appellate order, in which the assessee briefly explained that the original assessment under section 143(3) of the Act dated 30.12.2009 was passed and the income of the assessee was determined at Rs.29,54,357/-. The assessee further appealed before the CIT (Appeals), who has granted part relief to the assessee. The assessee, however, carried the matter in appeal before the Tribunal but withdrew the same vide order dated 22.1.2014. Notice under section 154 of the Act was, however, issued on 24.3.2014. The issue of additional income of Rs.38 lacs has been considered at original assessment stage and the Assessing Officer made the assessment in accordance with law. There is no mistake apparent from record. Whether set off any loss or otherwise is to be allowed against surrendered

income is clearly a debatable issue and would not fall under section 154 of the Act. The learned CIT (Appeals), however, did not accept the contention of the assessee and dismissed the appeal of the assessee. His finding in para 5 of the impugned order are reproduced as under :

“5. I have given careful consideration to the facts of the case and find that the assessment order dated 30.12.2009 has attained finality after passing of appellate order by CIT(A), Karnal on 30.03.2012. The issue of not permitting setting off the business loss with the surrendered income is a mixed question of fact and law which has been adjudicated upon by the first appellate authority in the order dated 30.03.2012. In the present order passed by the Assessing Officer u/s 28.03.2014 a mistake apparent from the record is being rectified to the extent that the finding of CIT(A) of not permitting setting off was inadvertently omitted. I find no reason and infirmity in this order because the findings given by CIT(A) are clear to the extent that no setting off of surrendered income against loss is permitted. If any such findings are omitted by the Assessing Officer while giving effect to the appellate order, these are mistakes apparent from record because the points of fact and law has been settled by the appellate authority. The Assessing Officer has no option but to give effect to these findings. Any omission of giving effect to the appellate findings is apparent from the record, the Assessing Officer was fully justified in correcting the mistake by invoking Section 154 of the Act. The appellant at this point of time not permitted to take any arguments against the findings recorded by CIT(A) in his order by indirectly challenging the order of rectification. I find no merits in the grounds of appeal and hence the grounds of appeal are dismissed.”

10. After considering the rival contentions, I am not inclined to sustain the orders of the authorities below. The Hon'ble Supreme Court in the case of T.S. Balaram, ITO, Company Circle IV, Bombay Vs. Volkart Brothers & Others, 82 ITR 50 (SC) held as under :

“A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from the record.”

11. The learned counsel for the assessee has referred to original assessment order dated 30.12.2009 under section 143(3) of the Act, copy of which is filed at page 5 of the Paper Book, in which the Assessing Officer examined the entire issue in detail after examining the books of account so produced with regard to the surrender of additional income of Rs.38 lacs. The Assessing Officer in the computation of income has considered the gross profit and reduced the expenditure from the Profit & Loss Account and then computed the income of the assessee (after considering the additional income) at Rs.29,54,357/-. The assessee preferred appeal before the CIT (Appeals), which was decided vide order dated 30.3.2012 (PB-27) and the assessee withdrew the appeal before the Tribunal vide order dated 22.1.2014 (PB-20). The computation of income by the Assessing Officer clearly shows that he has applied mind to the facts and circumstances of the case has computed the income of the assessee accordingly. Even thereafter, the Assessing Officer had taken up the proceedings under section 148 of the Act and also passed order under section 143(3)/147 of the Act dated 18.3.2013 (PB-23) and assessed the same income as was assessed earlier vide order dated 30.12.2009 finding no discrepancy in the record.

The question, therefore, left for my consideration would be whether set off any loss or otherwise as allowed against surrendered income by Assessing Officer can be taken in proceedings under section 154 of the Act. Definitely, it would clearly be a debatable issue and as such, cannot be subject matter of rectification proceedings under section 154 of the Act. Further when the matter travelled before the CIT (Appeals) against original assessment order and rejection of the books of account, applying GP rate and surrendered amount of Rs.38 lacs have been considered by the CIT (Appeals) and the order of the Assessing Officer has been upheld. The assessment order and computation of income has thus been affirmed by the CIT (Appeals). The CIT (Appeals) has co-terminus powers to that of the Assessing Officer and if there was any objection to the computation of income passed by the Assessing Officer, the CIT (Appeals) could have taken cognizance of the same and passed the necessary order thereon. The CIT (Appeals) affirmed the order of the Assessing Officer in this regard. Therefore, the assessment order dated 30.12.2009 would merge with the appellate order dated 30.3.2012. Therefore, the assessment order which has merged with the appellate order cannot remain subject matter of rectification under section 154 of the Act. It appears from the impugned order that the Assessing Officer after long drawn process of reasonings and after examining record and details has passed the impugned order under section 154/155 of the Act, which is not permissible in law. It further appears that subsequent Assessing Officer tried to differ with the

earlier Assessing Officer who has passed the original assessment order. Therefore, the impugned order cannot be sustained in law. I, therefore, set aside the orders of the authorities below and quash the same, resultantly, the additions are deleted.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated : 20th July, 2016

Rati

Copy to: The Appellant/The Respondent/The CIT(A)/The CIT/The DR.

Assistant Registrar,
ITAT, Chandigarh