

Limitation period for sec. 154 rectification begins when AO passes original order and not consequential one

Summary – The Lucknow ITAT in a recent case of Shri Nav Durga Bansal Cold Storage & Ice Factory, (the Assessee) held that for purpose of rectification under section 154, limitation starts from date on which original assessment order is passed by subordinate authority and not date when he had passed consequential order in terms of directions issued by appellate authority in remand.

Facts

- Assessment was completed under section 143(3) *vide* order dated 31-3-2006 denying the set off of brought forward capital loss of Rs.12.49 lakhs.
- On appeal, the Commissioner(Appeals) partly allowed the appeal on the issue of disallowance but the computation of long term capital gain was confirmed by the Commissioner (Appeals) against which an appeal was filed before the Tribunal and the Tribunal, *vide* its order dated 13-6-2008 decided the issue of disallowance and remitted the issue of computation of long term capital gain to the file of the Assessing Officer for a limited purpose to arrive at the fair market value on the date of transfer by referring to the Valuation Officer.
- The Assessing Officer passed a consequential order and re-computed the long term capital gain at Rs.33.41 lakhs. Against this order, the assessee again preferred an appeal before the Commissioner (Appeals) with the submission that the Assessing Officer had not followed the direction of the Tribunal in as much as he did not compute the capital gain after obtaining the report of the D.V.O. as directed by the Tribunal and instead took the deemed sales consideration under section 50C as adopted originally in the assessment.
- The Commissioner (Appeals) accordingly called a remand report from the Assessing Officer in this regard and during the remand proceedings, the Assessing Officer *vide* its order dated 25-1-2011 re-computed the long term capital gain in the light of report of the D.V.O. at Rs.13.20 lakhs.
- Having noted that the Assessing Officer had re-computed the capital gain as per the directions of the Tribunal, the Commissioner (Appeals) dismissed the appeal of the assessee being infructuous as the proper compliance of the directions of the Tribunal had been made in order dated 25-1-2011.
- Thereafter, the assessee moved an application under section 154 against the order dated 25-1-2011 before the Assessing Officer with the submission that the carry forward capital loss of Rs.12.49 lakhs relating to assessment year 2002-03 had been missed/left by the Assessing Officer while computing long term capital gain, therefore, the set off of the same be allowed against the capital gain for the impugned assessment year. The Assessing Officer denied the rectification on the ground that the set off of carry forward capital loss was denied in the original assessment passed on 31-3-2006; therefore, the rectification after a period of 4 years was not permissible.
- Thereafter, the assessee preferred an appeal before the Commissioner (Appeals) with the submission that the order dated 25-1-2011 had been merged with the original assessment order dated 31-3-2006; therefore, rectification under section 154 was permissible as the period of limitation would start from 25-1-2011 and not from 31-3-2006. The Commissioner (Appeals) re-

examined the issue in the light of various judicial pronouncements and came to the conclusion that the limitation for the purpose of section 154 started from the date of the original assessment i.e. 31-3-2006 and not from the order dated 25-1-2011 passed consequent to remand proceedings and directions of the Commissioner (Appeals) and Tribunal.

- Hence, the assessee preferred an appeal before the Tribunal and reiterated its contentions.

Held

- The controversy revolves around an issue as to which would be the date from which limitation starts for the purpose of rectification under section 154, whether it would be date on which original assessment order was passed or would it be the date when the Assessing Officer has passed an order consequent to the direction of the Commissioner (Appeals) in remand proceedings in terms of the order passed by the Tribunal.
- It is not in dispute that when the original order has been rectified under section 154, the original order is merged with the rectified order and limitation would start from the date of the rectified order passed under section 154. Similar is the position in a case where an appeal is filed. The original order would merge with the order passed by the appellate authority and the limitation for the purpose of section 154 would start from the date of the order passed by the appellate authority. But these propositions would not apply to those cases where the subordinate authorities are directed to pass an order consequent to the order of the appellate authority. In such type of cases, the jurisdiction with the subordinate authority or the Assessing Officer is very limited and they have to act and perform in terms of the directions issued by the appellate authority. They have no jurisdiction to enlarge or restrict the scope of enquiry/adjudication conferred by the appellate authority.
- In the light of the proposition laid down by Hon'ble Apex Court and various High Courts through judicial pronouncement, it was observed that the limitation from the latest order would start only on those cases where the original order merges with the subsequent order. As per the judicial pronouncements, the doctrine of merger would apply in two type of cases; (1) where the original order is rectified under section 154 and the (2) where the original order is modified by the order of the appellate authority. In such type of cases where the original order is merged with the subsequent order, the period of limitation for the purpose of section 154 would start from the latest order either passed under section 154 or by the appellate authority.
- But in the instant case, the question arises, can the limitation for the purpose of section 154 starts from the date of the order of the Assessing Officer passed consequent to the directions/order of the appellate authority. It was doubtful because while passing a consequential order, the scope of jurisdiction of the Assessing Officer is very limited and he has to act and perform pursuant to the directions of the appellate authority in terms mentioned/indicated in the order. Once the scope of jurisdiction of the Assessing Officer is restricted by virtue of the directions of the appellate authority, the Assessing Officer would not have any independent jurisdiction to rectify or modify the assessment order originally passed by him. Therefore, the consequential order passed by the

Assessing Officer cannot be called to be the rectified order of the original assessment order. Thus, the theory of doctrine of merger would not apply in such cases and the original assessment could not said to have been merged with the order of the Assessing Officer passed consequent to the directions in the orders of the appellate authority. Once the Assessing Officer cannot exceed the jurisdiction conferred by the appellate authority for passing an order in terms indicated in the appellate order, how the Assessing Officer can assume a jurisdiction to modify that rectified order passed under section 154.

- In the instant case, the order dated 25-1-2011 was passed during the remand proceedings pursuant to the remand order dated 6-1-2011 passed under section 254(4) and in terms of directions issued by the Tribunal, therefore, this order can only be a part of the appellate proceedings/order of the Commissioner (Appeals) and does not assume a character of the independent assessment order for the purpose of section 154.
- Further as per provisions of section 154(1A) a rectification can be sought with respect to any matter other than the matter, which has been so considered and decided by the appellate authority meaning thereby the appellate authority has jurisdiction to entertain the request of rectification with respect to those matters, which are not subject matter of the appeal before it.
- Therefore, at the most the assessee could have approached the Commissioner (Appeals) for such rectification but, he cannot approach the Assessing Officer for rectification in the order passed on 25-1-2011 as it was passed consequent to the directions of the Commissioner (Appeals) and the Tribunal. Therefore, the limitation can only start from the original assessment order for rectification as the original assessment cannot be called to have been merged with the order dated 25-1-2011 for the purpose of section 154. Therefore, the Commissioner (Appeals) has properly adjudicated the issue in the light of various judicial pronouncements and since no infirmity was found therein, it was confirmed.
- In the result, the appeal of the assessee stands dismissed.