

Exp. claimed after survey was disallowed as it was made to offset additional income offered in survey

Summary – The Chennai ITAT in a recent case of H. Gouthamchand Jain, (the Assessee) held that where assessee declared additional income during survey but to offset revenue effect of said additional income, claimed bogus commission expenditure subsequent to survey, said expenditure could not be allowed

Facts

- The Assessing Officer recorded that the assessee had claimed huge commission payment. He found that documents submitted in support of the claim of the expenditure were not proper. He opined that the assessee had nullified the effect of offering additional income by overstating expenditure after the date of survey. He disallowed the said expenditure.
- On appeal, the Commissioner (Appeals) accepted the claim of expenditure and, thus, reversed the order of Assessing Officer.
- On further appeal, the Tribunal upheld the order of the Assessing Officer.
- On application for rectification:

Held

- The Tribunal in earlier occasion fairly considered the entire arguments of the assessee and has given a finding and decided the issue against the assessee. Now, the assessee's counsel wants to re-argue the settled issue by putting some arguments. If the arguments of the assessee's counsel are considered, it will amount to review of earlier order of this Tribunal, for which, the Tribunal has no power.
- It is well-settled that statutory authority cannot exercise power of review unless such power is expressly conferred. There is no express power of review conferred on this Tribunal. Even otherwise, the scope of review does not extend to rehearing of the case on merit.
- The scope and ambit of application of section 254(2) is very limited. The same is restricted to rectification of mistakes apparent from the record. Recalling the entire order obviously would mean passing of a fresh order. That does not appear to be the legislative intent. The order passed by the Tribunal under section 254(1) is the effective order so far as the appeal is concerned. Any order passed under section 254(2) either allowing the amendment or refusing to amend gets merged with the original order passed. The order as amended or remaining un-amended is the effective order for all practical purpose. An order under section 254(2) does not have existence *de hors* the order under section 254(1). Re-calling of the order is not permissible under section 254(2). Recalling of an order automatically necessitates rehearing and readjudication of the entire subject-matter of appeal. The dispute no longer remains restricted to any mistake sought to be rectified. Power to recall an order

is prescribed in terms of rule 24 of the ITAT Rules, 1963, and that too only in case where the assessee shows that it had a reasonable cause for being absent at a time when the appeal was taken up and decided *ex parte*. Judged in the above background the order passed by the Tribunal is indefensible.

- The words used in section 254(2) are 'shall make such amendment, if the mistake is brought to its notice'. Clearly, if there is a mistake, then an amendment is required to be carried out in the original order to correct that particular mistake. The provision does not indicate that the Tribunal can recall the entire order and pass a fresh decision. That would amount to a review of the entire order and that is not permissible under the Income Tax Act. The power to rectify a mistake under section 254(2) cannot be used for recalling the entire order. No power of review has been given to the Tribunal under the Income Tax Act. Thus, what it could not do directly could not be allowed to be done indirectly.
- The assessee with sole intention to go out of offer made by the assessee, claimed additional expenditure, which is not as per the statement recorded during the survey under section 133A of the Act. However, considering the *modus operandi* followed by the assessee, the Tribunal has taken serious objection and reversed the order of the Commissioner (Appeals) and confirmed the addition of Rs. 15 lakhs.
- In the result, the miscellaneous application of the assessee is dismissed.