

No rectification u/s 154 is permissible once order passed by CIT(A) is accepted by income-tax department

Summary – The High Court of Madhya Pradesh in a recent case of Gurmeet Singh Vilku, (the Assessee) held that where Income-tax officer passed an order allowing benefit under section 89(1) to assessee in respect of subsistence allowance received by him for time period of its suspension from job and same was confirmed by Commissioner (Appeals) and order had attained finality and became binding, impugned rectification proceedings initiated by revenue under section 154 against said order for withdrawing relief under section 89(1) was to be dismissed

Facts

- The assessee was an employee of a bank and while in service a departmental enquiry was initiated against him and he was placed under suspension. The assessee was ultimately terminated by the bank in the departmental enquiry against which the assessee had taken up proceedings before this Court. Ultimately, after disposal of the assessee's writ appeal whereby the order passed setting aside the termination and remanding the matter, was set aside, this Court held that the assessee should be treated as an employee under suspension from 1-3-1996 to 16-4-2007 and be paid subsistence allowance for the said period. The subsistence allowance of Rs. 20.90 lakhs was paid to the assessee by the bank after deducting a sum towards income-tax.
- The assessee approached the Income-tax authorities for refund of the Tax deducted from the subsistence allowance. The assessee filed an application for refund of the tax deducted by the authorities on the ground that the amount paid to the assessee was a debt accruing on account of the judgment of the Court and was not taxable. But the application was rejected by the authorities on ground that the assessee had not filed any return and, accordingly, the assessee was advised to do so by the Income-tax authorities. On the advise of the income tax authorities, the assessee filed a return. The prayer for refunding the amount deducted by treating it as non-taxable on the ground that it was a judgment debt, was not accepted by the authorities and an order of assessment against the assessee under section 143(1), was passed.
- Thereafter the assessee filed an application under section 154, for rectification of the mistake which was dismissed by the Income-tax Officer, however while dismissing the application he observed that since the pay and allowance paid to the assessee pertained to the period 1-3-1996 to 16-4-2007 relief under section 89(1) was allowable and the assessee could file revised application under section 154 along with revised computation treating the subsistence allowance as income and claiming relief under section 89(1).
- Accordingly, the assessee filed a revised application before the Income-tax Officer. The said application was allowed by the Income-tax Officer taking into consideration the observations and the opinion expressed by the Income-tax Officer in his order to the effect that the assessee was entitled to relief under section 89(1). Same observation was also affirmed by the Commissioner (Appeals).

- In spite of the aforesaid order holding that the assessee was entitled to the benefit of section 89(1), on the subsistence allowance. The revenue served the assessee impugned notice under section 154/155 in which it was stated that assessee had not shown any income in return of income filed for assessment year 2009-10 and also not claimed any relief under section 89(1) in return of income, so it could not be allowed to proceed under section 154, as there was no mistake apparent from the record. Thus, the order under section 154 passed on 5-12-2014 needed to be rectified by withdrawing relief allowed under section 89(1) and to revise the total income from Rs. 20.87 lakhs to Rs. *NIL* as shown by assessee in the original return of income.
- The assessee being aggrieved by the notice had filed an instant petition.

Held

- It is observed that the fact that the petitioner is entitled to the benefit under section 89(1) is an undenied and undisputed fact. It is also clear from a perusal of the order dated 30-8-2011 passed by the Income-tax Officer in the previous application filed by the petitioner under section 154, that the Income-tax Officer in no uncertain terms has held that the relief under section 89(1) is allowable to the petitioner for which he can file a revised application while rejecting the application filed by the petitioner under section 154.
- It is also an admitted and undisputed fact that this order of the Income-tax Officer has been affirmed in appeal by the Commissioner (Appeals) by order dated 1-10-2012. It is apparent from a perusal of the aforesaid orders that the Income-tax Officer as well as the Commissioner (Appeals) while rejecting the applications filed by the petitioner under section 154 on 30-8-2011 and 1-10-2012 respectively have categorically held that the relief under section 89(1) is allowable to the petitioner and that these orders have neither been set aside or withdrawn and exists as they are and have attained finality. It is also apparent that the subsequent order dated 5-12-2014 has been passed on the revised application filed by the petitioner, by the authorities under section 154, on the basis of and relying on the aforesaid orders of the Income-tax Officer dated 30-8-2011 and the appellate order dated 1-10-2012 wherein it was held that the claim of the petitioner under section 89(1) was allowable and consequently allowed the claim of the petitioner under section 89(1).
- It is also an undisputed fact that the only ground that has been mentioned in the impugned notice dated 9-5-2017 issued under section 154 is that the petitioner had not shown any income in his return for the year 2009-10 and had not claimed any relief under section 89(1) in the return and, therefore, no orders under section 154 could have been passed by the Income-tax Officer granting relief under section 89(1). None of the other grounds raised and argued before this Court have been mentioned in the notice.
- From the aforesaid, it is apparent that the authorities while issuing the impugned notice have totally ignored the orders passed by the Income Tax Officer dated 30-8-2011 and the Commissioner (Appeals) order dated 1-10-2012 wherein it has been held that relief under section 89(1) is allowable to the petitioner for which he can file a revised application under section 154 and that it was pursuant to the aforesaid observations of the Income-tax Officer and the Commissioner

(Appeals) that the petitioner had filed the revised application under section 154. The respondents have also overlooked the fact that the petitioner's claim was allowed by order dated 5-12-2014 mainly in view of the previous orders dated 30-8-2011 and 1-10-2012.

- The authorities have also not taken into consideration the fact that in the proceedings taken up by the authorities on the revised application under section 154, the authorities duly asked the petitioner to submit a form under section 10-E and also sought for and received information from the Bank regarding the salary paid towards subsistence allowance pursuant to the orders passed by this Court and that it was on the basis of the aforesaid information and the document filed by the petitioner that benefit under section 89(1) was given to the petitioner.
- It is also to be observed that the submissions made by the respondents to the effect that the relief under section 89(1) was barred by limitation and, therefore, could not have been allowed by the Income-tax Officer *vide* order dated 15-12-2014, does not find any mention in the particulars of the mistake that were proposed to be rectified in the notice dated 9-5-2017 and is apparently an afterthought.
- Quite apart from the above, it is also an undisputed fact that the order of status quo was passed by this Court on 22-8-2017 and that the respondents authorities in the return have filed order dated 1-8-2017 passed by the authorities under section 154 pursuant to the notice issued to the petitioner on 9-5-2017, but the said order was sent on the address of the MTS and was never communicated to the petitioner and that the petitioner came to know about the same only when the return was filed by the respondents. It is also evident from a perusal of the order dated 1-8-2017 that the said order does not make any mention of the impugned notice dated 9-5-2017 and in fact the only notice mentioned therein is notice dated 30-6-2017 said to have been issued by the authorities concerned to the petitioner for hearing 7-7-2017, but no copies of the notice or documents in support of the said avertments made in the order dated 1-8-2017 have been placed before this Court.
- A perusal of the observations made by the Income-tax Officer in the order dated 1-8-2017 makes it further clear that the order has been passed not on the basis of any law but on the basis of the detailed instructions issued by the Joint Commissioner in its letter dated 25-5-2016 and, therefore, there is no independent application of mind by the Income-tax authorities to the issues raised therein or involved in the case.
- It is also apparent that the Income-tax authorities while passing the order dated 1-8-2017, has totally ignored and omitted to take note of the findings recorded by the Income-tax Officer in its order dated 30-8-2011 to the effect that the relief under section 89(1), is allowable to the petitioner and for which purpose he could have filed a revised application under section 154, which has been affirmed and confirmed by the Commissioner (Appeals) by order dated 1-10-2017. The authorities have simply taken note of the fact that the application under section 154, was dismissed without taking note of the aforesaid finding and has revised the order.
- In such circumstances, the proceedings sought to be initiated by the respondents against the petitioner *vide* the impugned order dated 9-5-2017 and decided against him by order dated 1-8-

2017 are totally misplaced and misconceived and perverse, moreso as they have been passed totally ignoring the final and binding orders passed by the Income-tax Officer and the Commissioner (Appeals) dated 1-10-2012 which had become final.

- The very initiation of the impugned section 154 proceedings was misconceived and uncalled for as there was no mistake in the previous orders requiring rectification in view of the admitted and undisputed fact that the petitioner is entitled to claim benefit under section 89(1), and that his claim thereunder is allowable.
- In the circumstances the petition filed by the petitioner is allowed, the impugned show cause notice dated 9-5-2017 and the subsequent order dated 1-8-2017 are quashed and it is directed that the petitioner is entitled to and shall be paid his dues mentioned in order dated 5-12-2014 by the Income-tax Department within two months with allowable interest.