

TAX FLASH NEWS

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The tax officer can pass a rectification order against an incorrect MAT credit granted to the taxpayer as it is a mistake apparent from the record

Recently, the Delhi Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Fiserv India Pvt Ltd.¹ (the taxpayer) held that the Assessing Officer (AO) was correct in passing a rectification order under Section 154 of the Income-tax Act, 1961 to rectify the Minimum Alternate Tax (MAT) credit granted to the taxpayer wrongly. MAT credit given to the taxpayer was found to be a mistake apparent from the record. Further merely because the taxpayer had disputed the assessment before the higher appellate forum, it does not deprive the right of the tax department to rectify the assessment order.

Facts of the case

During Assessment Year (AY) 2013-14, the taxpayer's assessment was completed with certain additions to the returned income. On perusal of the assessment record, the AO observed that the taxpayer was allowed to adjust MAT credit for AY 2010-11 and AY 2011-12. The AO observed that during AY 2011-12, the additions were made in draft assessment order on account of transfer pricing adjustment and in view of such additions, MAT credit was allowed by the then AO. However, such MAT credit was not allowable to the taxpayer. Therefore, MAT credit availed by the taxpayer and allowed by the then AO was not correct.

Thus, the AO held that it was a mistake apparent from the record, which resulted into the incorrect set-off of MAT credit. Consequently, the AO passed a rectification order under Section 154 read with Section 143(3) wherein income of the taxpayer remained unchanged but MAT credit was withdrawn. The AO had also charged interest under Section 234B on account of above reduction in the MAT credit. The Commissioner of Income-tax (Appeals) [CIT(A)] upheld the order of the AO.

¹ Fiserv India Pvt Ltd. v. ACIT [ITA No. 6583/Del/2019, AY- 2013-14] - Taxsutra.com

Tribunal's decision

Whether correcting MAT credit is a debatable issue and thus rectification under Section 154 is not allowed

On perusal of MAT credit provisions², it was observed that the amount of tax credit shall be carried forward and set-off in future year in which tax becomes payable on the total income computed in accordance with the provisions other than Section 115JB. Thus, it can be set-off in the year when tax computed under normal provision is more than MAT payable by the taxpayer. There is an outer time limit provided, that it cannot be carried forward beyond 10 years. There was no other condition to claim the benefit of the set off of MAT credit has been prescribed. Further, there was no provision that the AO should determine the tax credit, which shall be carried forward and set off. It is an inbuilt mechanism of the law of the credit and set off. Therefore, there was no option available either to the AO or to the taxpayer. The language of law is simple and clear.

Thus, there was no debatable issue involved in adjusting the MAT credit against the tax liability of the taxpayer. In the present case, MAT credit given to the taxpayer was found to be a mistake apparent from the record. Accordingly, the AO had correctly assumed jurisdiction under Section 154 to rectify MAT credit granted to the taxpayer wrongly.

Whether rectification under Section 154 is not allowed when appeal is pending at a higher appellate forum

Merely because the taxpayer had disputed the assessment before the higher appellate forum, it does not deprive the right of the tax department to rectify the assessment order.

² Section 115JAA of the Act

If the taxpayer gets any relief on account of the order of the appellate authorities, naturally, the income and the consequent tax liability of the taxpayer would be adjusted pursuant thereto. Therefore, pendency of appeal before the higher forum cannot be a ground to hold that the order passed by the AO was not proper, if it is otherwise in order.

Interest under Section 234B on account of above reduction in the MAT credit

The interest under Section 234B is payable if the taxpayer who is liable to pay advance tax has failed to pay such tax. In the present case, while calculating the tax payable, MAT credit was allowed to the taxpayer, which was not allowable. Therefore, the liability under Section 234B arises.

The provisions of Section 234B in a clear term impose mandate to collect interest at the rates stipulated therein. The provisions of Section 234B are mandatory and the AO is duty bound to charge interest under Section 234B.

Courts have granted certain leniency if there is a shortfall arising because of the interpretation of the law or unclear tax liability to the taxpayer. It may also happen where the advance tax liability arises because of a subsequent court ruling or an amendment. In all these cases, Courts have taken a lenient view to not to allow the AO to charge interest under Section 234B. However, in the present case, it was a computational error. Either the AO or the taxpayer, would have computed the tax liability at that particular time would have correctly claimed MAT credit available to the taxpayer and charged interest under Section 234B. Therefore, the Tribunal did not find any infirmity in the order of the AO in computing interest liability under Section 234B.

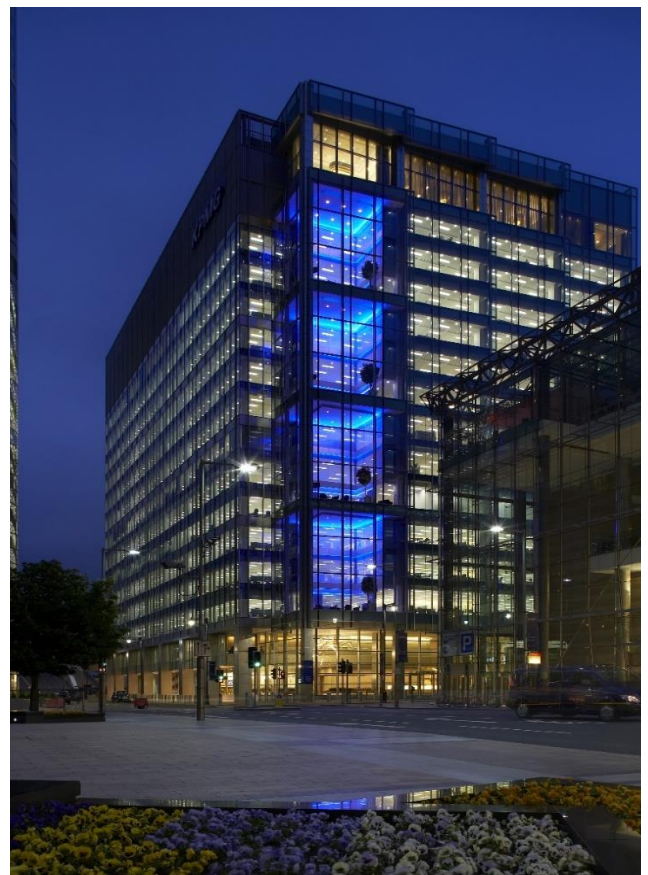
Our comments

The principle governing the applicability of Section 154 was laid down by the Supreme Court in the case of *Volkart Brothers*³. The Supreme Court observed that a mistake apparent on the record must be an obvious and patent mistake and not something which had to be established by a long-drawn process of reasoning on points on which there might be conceivably two opinions. A decision on a debatable point of law was not a mistake apparent from the record.

The Chandigarh Tribunal in the case of *Clinic Pvt. Ltd.*⁴ held that the AO cannot be allowed to pass order under Section 154 on a debatable issue. There was no justification for the AO to pass a rectification order under Section 154 to disturb the calculation under Section 115JB, already considered. When the

AO had consciously taken the view to frame regular assessment and made certain additions, AO was not empowered to take contrary view to review entire assessment order already framed. It was against the spirit of provision of Section 154.

In the present case, the Tribunal has held that there was no debatable issue involved in adjusting the MAT credit against the tax liability of the taxpayer. Accordingly, the AO was correct to pass the rectification order under Section 154 as the MAT credit given to the taxpayer was found to be a mistake apparent from the record.



³ ITO v. Volkart Brothers [1971] 82 ITR 50 (SC)

⁴ Clinic Pvt. Ltd. vs. ACIT [ITA No. 112/Chd/2017, dated 2 June 2017]

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