

**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD  
BEFORE SH. KUL BHARAT, VICE PRESIDENT  
AND  
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.51/ALLD/2024

A.Y. 2016-17

|                                                 |     |                                            |
|-------------------------------------------------|-----|--------------------------------------------|
| Amar Nath Seth,<br>1, Rani Bagh, Sadar Mirzapur | vs. | Income Tax Officer,<br>Ward-3(2), Mirzapur |
| <b>PAN: AZLPS9547C</b>                          |     |                                            |
| (Appellant)                                     |     | (Respondent)                               |

|                        |                        |
|------------------------|------------------------|
| Assessee by:           | Sh. S.K. Jaiswal, C.A. |
| Revenue by:            | Sh. A.K. Singh, Sr. DR |
| Date of hearing:       | 07.09.2026             |
| Date of pronouncement: | 29.09.2026             |

**ORDER**

**PER NIKHIL CHOUDHARY, A.M.:**

This is an appeal filed by the assessee against the order of the Id. CIT(A), NFAC dated 3.03.2024, wherein the Id. CIT(A) has dismissed the appeal of the assessee against the order passed under section 154 of the Income Tax Act, 1961 for the assessment year 2016-17 on 3.03.2024. The grounds of appeal are as under: -

*"1. BECAUSE learned CIT(A) has erred in law and on facts in dismissing the appeal in limine without giving any finding on merit. The learned CIT(A) has failed to appreciate the fact that statement of facts as filed along with memo of appeal itself contains the sufficient material to decide the appeal.*

*2. BECAUSE the learned CIT(A) has failed to appreciate the fact that there was no mistake in order passed under section 143(3), the rectification proceeding initiation under section 154 on the basis of audit objection, is based on conjecture and surmises and not on the basis of any material on record.*

*3. BECAUSE the learned CIT(A) has erred in law and on facts in sustaining addition of Rs. 80,60,870/-, on account of difference in sales figure of Rs. 89,56,524/- as reported in the ITR-4 while computing the income under the presumptive scheme of section 44AD and sales of Rs. 8,95,654/- as disclosed in the profit and loss account filed during the course of scrutiny assessment proceeding under section 143(3) of the*

*Income Tax Act, 1961 by Invoking the provision of section 154 of the income Tax Act, 1961.*

*4. BECAUSE the learned CIT(A) has failed to appreciate the fact that while filling the ITR there was a clerical mistake and one extra digit 7 was inadvertently typed in the sales figure Le. Rs. 89,56,524/- Instead of Rs. 8,95,654.*

*5. BECAUSE the CIT(A) has failed to appreciate the facts that discrepancy in reporting the sales figure in ITR was noticed during the course of assessment proceeding and the appellant has brought the aforesaid discrepancy to the notice of the assessing officer and furnished his explanation. It was only after considering the explanation, the assessing officer has arrived at conscious decision to accept the sale of Rs. 8,95,654/-in complete substitution of the sale figure given in the ITR.*

*6. BECAUSE without prejudice to the contention raised the ground above gross sales cannot be the income, therefore only income as per the provision of section 44AD can be added.*

*7. BECAUSE the appellant denies for levy of interest under section 234A, 2348 and 234C of the Income Tax Act, 1961.*

*8. BECAUSE the order appealed against is contrary to the facts, law and principle of natural justice."*

2. The facts of the case are that the Id. Assessing Officer passed an assessment order under section 143(3) in which the income of the assessee was assessed at Rs. 2,06,570/-. Subsequently, the Revenue Audit Party observed that during the year, the assessee had shown gross receipts in the ITR at Rs. 89,56,524/- whereas in the profit and loss account, the total sales were shown at Rs. 8,95,654/-. Therefore, the amount of Rs. 80,60,870/- was required to be added back to the total income of the assessee on this account. The Id. Assessing Officer agreed that there was a mistake apparent from the record in his assessment order and issued a notice on 22.12.2022, seeking the assessee's response on the same. He, thereafter, records that while no response was given to the initial notice, a response was filed in respect of the subsequent notice in which it had been submitted that the total sales had wrongly been entered in his e-filed ITR but this was not a mistake apparent from record. Rather it was a change of opinion and therefore, not rectifiable through the order under section 154. The Id. Assessing Officer opined that if

the assessee had filled total sales wrongly in his ITR, he had the option to revise the ITR and correct the mistake. But the assessee had not done so. Therefore, this was clearly a mistake from the assessee's side and since this was evident from the records, it was not a change of opinion. Accordingly, he made a rectification under section 154 by adding back the amount of Rs. 80,60,870/- and finally computed total tax and interest liability on the same at Rs. 36,32,768/-.

3. Aggrieved with the said order, the assessee filed an appeal before the ld. CIT(A), NFAC. The ld. CIT(A) noted that four notices were issued to the assessee under section 250 for hearing, but the assessee did not file any written submissions with regard to the same. Therefore, he was constrained to pass an order on the basis of materials on record. He went through the observations of the ld. Assessing Officer and noted that the assessee had not submitted any documentary evidence to substantiate the grounds taken by him. Since the assessee had not furnished any explanation in support of its grounds, the grounds were not maintainable and he proceeded to dismiss them and confirm the additions made by the ld. Assessing Officer of Rs. 80,60,870/-. He also went on to cite several judgments where the Courts had held that it was for the assessee to pursue the appeal and if the same were not pursued, then the appellate authorities were not bound to entertain the appeal. With these comments, he dismissed the appeal of the assessee.

4. The assessee is aggrieved by such dismissal of his appeal and has accordingly come before us. Sh. S.K. Jaiswal, C.A. (hereinafter referred to as the ld. AR) submitted that the assessee was an individual engaged in the repairing of mobile sets and of selling Animal Fodder. He had filed his return for the assessment year under section 44AD disclosing net income from business of Rs. 2,64,000/- on gross sales of Rs. 8,95,654/-. While filing the

return of income, the return preparer committed a clerical mistake and wrongly typed the sale figure of Rs. 89,56,524/- instead of actual sale figure of Rs. 8,95,654/- i.e. one extra digit '2' was wrongly typed. During the course of assessment proceedings, the assessee had filed a copy of his trading, profit and loss account and balance-sheet on the basis of records of purchases, sales and other relevant records maintained in the course of course of regular business. While filing the financial statements of accounts during the course of assessment proceedings, it came to notice that the aforesaid error had been committed in typing of the sale figure while filing the ITR and the assessee himself brought the mistake to the notice of the Id. Assessing Officer. The Id. Assessing Officer, after considering the explanation furnished by the assessee and after verifying the VAT return came to the conclusion that the aforesaid mistake in the filing of the sales figures was just a clerical mistake and he accepted the actual sales and framed the assessment order under section 143(3), by accepting the returned income of the assessee. He even made reference to it in the assessment order. Later on, on the basis of an audit objection, the Id. Assessing Officer issued a notice under section 154 proposing to make addition of Rs. 80,60,870/- on account of the difference in the sale as per ITR 4 and sales declared in the financial statements. During the course of rectification proceedings, the assessee had objected to the same on merits pointing out that the difference in sale was only on account of typographical mistakes and that proceedings under section 154 could not be invoked on the basis of change of opinion. However, the Id. Assessing Officer failed to note that the sale was verifiable from the return filed under U.P. VAT Act, 2008 filed on monthly / quarterly basis and the financial statement filed during the course of original assessment proceedings. He had accordingly made the addition which had no basis. All these facts had been submitted before the Id. CIT(A) in the statement of facts that were furnished

alongwith the appeal but the Id. CIT(A) had, despite reproducing the same in his appeal order, ignored the same and proceeded to dismiss the appeal of the assessee in *limine* holding that the same had not been explained. It was prayed that since the Id. CIT(A) had not considered that the Id. Assessing Officer had verified the matter at his end before accepting the submission of the assessee during assessment proceedings, there could be no order under section 154 for a change of opinion. Accordingly, he prayed that the order was deserving of being quashed.

5. On the other hand, Sh. A.K. Singh, Sr. DR (hereinafter referred to as the Id. AR) submitted that since the Id. CIT(A) had not considered the issue on merits, it would be appropriate if the matter is restored to him for giving a finding on facts in the first instance and deciding the legal issue, rather than the matter being decided by the Tribunal in the very first instance.

6. We have duly considered the facts of the case and the submissions of both parties. It appears that the issue of whether the difference in the sale amount entered in the ITR and the financial statements submitted at the time of assessment were examined by the Id. Assessing Officer at the time of assessment with reference to the VAT returns filed by the assessee and the Id. Assessing Officer had satisfied himself that the difference had arisen only on account of a typographical error and not on account of any omission on the part of assessee. That being the case, the same could not have been held to be as a mistake apparent from the record without pointing out the facts of what the mistake was. To disregard the view formed by the Id. Assessing Officer after enquiry, only because the audit had observed a contradiction in the figures as recorded in the income tax return and the financial statements, amounts to a forming an opinion on the basis of speculation and borrowed satisfaction, without pointing out any mistake apparent from the record.

These facts were a very much in the knowledge of the Id. CIT(A) as these facts had been brought on record by the assessee in the statement of facts that was filed alongwith the Form 35, but the Id. CIT(A) had chosen to disregard the same and pass the order without considering the facts placed before him. On consideration of those facts, and the assessment order passed by the Id. Assessing Officer, we note that in the absence of any material being brought on record to demonstrate that the Id. Assessing Officer committed a mistake in assessing the sales at Rs. 8,95,654/- after comparing the same with the VAT returns filed by the assessee, it cannot be held that there was any mistake apparent from the record in the assessment order passed by the Id. Assessing Officer, after due enquiry. Therefore, the action of the Id. Assessing Officer in passing a rectification order under section 154, being based on borrowed satisfaction and without any finding of mistake in the enquiries conducted during assessment proceedings, is not maintainable and consequently, the same is quashed. Accordingly, the addition of Rs. 80,60,870/- on this account is held to be bad in law and is deleted.

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

Order pronounced on 29.09.2026 in the Open Court.

**Sd/-**  
**[KUL BHARAT]**  
**VICE PRESIDENT**

DATED: 29/09/2026

Sh

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR, ITAT,
4. CIT,
5. The CIT(A)



**Sd/-**  
**[NIKHIL CHOUDHARY]**  
**ACCOUNTANT MEMBER**

By order  
Sr. P.S.