

dik

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

INCOME TAX APPEAL NO. 1759 OF 2016

Pr. Commissioner of Income Tax-2 ...Appellant
vs
M/s Aristo Pharmaceuticals Pvt. Ltd. ...Respondent.

**WITH
INCOME TAX APPEAL NO. 1784 OF 2016**

Pr. Commissioner of Income Tax-2 ...Appellant
vs
M/s Aristo Pharmaceuticals Pvt. Ltd. ...Respondent.

.....

Mr Suresh Kumar for the Appellant in both appeals.
Mr Ajay Kumar Rastogi a/w Ms Smriti Singh I/b Atul Jasani for the
Respondent in both appeals.

.....

**CORAM : AKIL KURESHI &
 B.P.COLABAWALLA, JJ.
 FEBRUARY 11, 2019.**

P.C. :

Both these appeals filed by the appellant - Revenue
arising out of similar background. We may dispose of the appeals by
common order.

2 The facts can be taken from Income Tax Appeal No. 1759
of 2016 which concerns the Assessment Year ("A.Y." for short) 2008-
09. The following question is raised for our consideration-

“(a) Whether on the facts and in the circumstance of the case and in law the Hon'ble Tribunal is correct in law in holding that order passed by the AO under section 154 of the IT Act and confirmed by CIT(A) is rectifying the original assessment is not justify?”

3 Assessing Officer passed an order of assessment under Section 115WE(3) of the Income Tax Act, 1961 (“the Act” for short) and accepted the assessee's working out of the liability of paying Fringe Benefit Tax (“FBT” for short). Subsequently the A.O. desire to invoke powers of rectification vested under Section 154 of the Act. He issued a notice and passed an order modifying the rate of FBT treating the assessee's sales promotion items as gifts. The assessee carried the matter in appeal on the ground that the A.O. could not have made such modifications. The CIT(A) dismissed the appeal, upon which the assessee carried the appeal to the Tribunal. The Tribunal by the impugned Judgment allowed the assessee's appeal, making the following observations-

“We have considered the rival contentions. Admittedly, the issue as to at what value the fringe benefits have to be assessed in this case is on the face of it is a debatable issue. The assessee had given explanation that it were virtually the sale promotion expenses in the shape of free samples and the articles covering the name and logo of the assessee company which were given to the distributors/doctors for the promotion of the products. The issue was examined by the AO and the FBT return filed by the assessee was accepted. A perusal of the assessment order dated 25.11.2008 does not reveal any mistake apparent on record in the said order. The jurisdiction of the AO under section 154 of the Act is very limited to the extent of rectification of mistake apparent on record. However, we find that the AO in fact exercising his jurisdiction under section 154 has reviewed the original assessment order and has enhanced the assessable fringe benefits. It has been time and again held by the higher courts that the power under

section 154 of the Act is a limited power to correct only those mistakes which are apparent on record. It is not a power of revision or review. A mistake is apparent on the face of record when it is patent, glaring, obvious or self evident. A mistake is apparent on the record if no external help either on fact or in law is required to detect such mistake. If the alleged mistakes require investigation into facts or determination of law or discussion of debatable points are involved or two opinions are possible on the issue then such pointed or mistakes cannot be said to be mistakes apparent on record, which can be rectified under section 154 of the Income Tax Act. Reliance in this respect can be placed on the decisions of the Hon'ble Supreme Court in the case of "T.S.Balaram ITO Vs. Volkat Brothers" and of the Hon'ble Bombay High Court in the case of "Sidhramappa Andannappa Manvi Vs CIT" 21 ITR 333."

4 Having heard the learned counsel for parties and having perused the documents on record, we are in agreement with the view of the Tribunal. A.O. having examined the assessee's claim and having passed the order, accepting the FBT after scrutiny, could not have modified such an order in purported exercise of rectification powers. It is well settled that the power of rectification is not the same as review power. Under such powers, the A.O. can rectify errors apparent on record. Detailed consideration would not be permissible. In the result no question of law arises. The Income Tax Appeals are dismissed. No order as to costs.

(B.P.COLABAWALLA, J.)

(AKIL KURESHI, J.)