

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.730/Bang/2023
Assessment year : 2016-17

Manjunath Obaiah, No.22, Manjunatha Layout, Kanakanagar, Yelchenahalli, J P Nagar Post, Bengaluru – 560 078. <b>PAN : AAHPO 8766G</b>	Vs.	The Assistant Commissioner of Income Tax, Circle 4(3)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sreehari Kutsa, Advocate
Respondent by	:	Shri Subramanian S., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	14.02.2024
Date of Pronouncement	:	23.02.2024

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

This appeal is filed by the assessee against the DIN & Order No.ITBA/NFAC/S/250/2023-24/1053683503(1) dated 13.06.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2016-17 on the following grounds:-

“1. The Order of the learned Commissioner of Income Tax (Appeals) passed under section 250 of the Act is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.

2. The Appellant denies to be assessed to tax on total income as determined by the learned AO of Rs. 1,11,16,500/- as against the total income reported by the Appellant of Rs. 42,65,250/- on the facts and circumstances of the case.
3. The Learned Commissioner of Income-tax (Appeals) erred in concluding that benefit of indexation not provided in computation of capital gains is not mistake apparent from record rectifiable under section 154 of the Act.
4. The Learned Commissioner of Income-tax (Appeals) erred in concluding that the Appellant has invoked the provisions of 154 of the Act to disturb a concluded finding which is incorrect as per the facts and circumstances of the case.
5. The Learned AO passed rectification order under section 154 of the Act without providing an opportunity of hearing as contemplated under section 154 of the Act and consequently the principles of natural justice has been violated, rendering the order bad at law on the facts and circumstances of the case.
6. The learned CIT(A) ought to have held that the learned AO is not justified in not rectifying the failure to provide the benefit of indexation in exercise of powers under section 154 of the Act on the facts and circumstances of the case.
7. The learned AO erred in treating the amount of capital gains as unexplained investment u/s 69A in the rectification order in the facts and circumstances of the case.
8. The learned officer erred in disallowing cost of improvement of Rs.8,00,000/- in computation of capital gains in the facts and circumstances of the case.
9. The learned officer erred in treating agricultural income of Rs. 1,75,000/- as unexplained income u/s 69A without considering the land holdings of the Appellant in the facts and circumstances of the case.
10. The learned officer erred in disallowing Rs.60,000/- deduction under Chapter VIA in the rectified order without considering the facts and circumstances of the case.

11. Without prejudice to the right to seek waiver with the Hon'ble Chief Commissioner of Income Tax/Director General of Income Tax, the Appellant denies itself liable to be charged to interest under section 234A, 234B and 234C of the Act which under the facts and circumstances of the case deserves to be cancelled. The calculation of interest under section 234A, 234B and 234C of the Act is not in accordance with law as the rate, amount and method for calculating interest is not discernible from the order of assessment.

12. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

13. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.”

2. The brief facts of the case are that the assessee filed return of income on 30.03.2017 declaring income from house property, capital gain and other sources. The case was selected for scrutiny and statutory notices were issued to the assessee. The assessee submitted necessary details manually. After examination of the documents, the AO noted that the assessee has claimed sale of agricultural land and claimed agricultural income as exempt. The said agricultural land sold was situated in a village named Gulakamale village, Uttarahalli Hobli, Bangalore South Taluk. The AO noticed that the land is non-agricultural residential property and agricultural land was converted as per the endorsement order of conversion by the Special Deputy Commissioner order No.ALN(SU)SR(K)23/14-15 dated 05.08.2015.

Accordingly the claim of exempt income on sale of non-agricultural land is prima facie incorrect. He also made enquiry regarding distance of the property and he noted that the property is situated within 8 Kms. from the Bangalore Municipal outer limits under ward named Anjanapura. Accordingly he noted that the land sold by the assessee comes under the definition of capital asset and made addition to the income of the assessee. The assessee has shown Rs.59,91,250 as exempt income on sale of non-agricultural residential purpose land and claimed cost of improvement of Rs.8,00,000. However evidence for cost of improvement was not produced by the assessee and in the sale deed also there is no mention of any improvement. Accordingly show cause notice was issued to the assessee on 26.10.2018 asking for explanation for incorrect claim and exempt income for sale of non-agricultural residential purpose land. There was no reply to the show cause notice. The AO treated the total amount of Rs.67,91,250 (59,91,250 + 8,00,000) as income from long term capital gain and brought to tax.

3. The AO further noted that the assessee had reported agricultural income of Rs.1,75,000 however assessee could not produce any evidence regarding sale proceeds in the nature of agricultural products and land holding details was also not produced. There was no proof of agricultural activity carried out by the assessee. Therefore, the amount of Rs.1,75,000 was treated as unexplained money u/s. 69A of the Act.

4. Later on, the assessee filed rectification application which was disposed by the AO on 07.02.2019 and passed order as under:-

“The agricultural income added twice is rectified. The addition made under section 69A is recomputed correctly in the rectification order.”

Accordingly OGE was passed and gross total income was computed at Rs. 1,11,26,501/-

5. Aggrieved from the above order of the AO u/s. 154, the assessee filed appeal before the CIT(Appeals) raising various grounds which has been incorporated by the CIT(A) in his order. The assessee also filed detailed written submissions. After considering the entire submissions, the CIT(Appeals) dismissed the appeal of the assessee. Aggrieved from the above order, the assessee has filed appeal before the ITAT.

6. The Id. AR strongly submitted that the AO has erred while passing the order u/s. 154 without following the principles as laid down u/s. 154. The AO did not give any opportunity to the assessee before passing the order and he has also enhanced the income. The AO during the assessment proceedings noted that the amount received from sale of land of Rs.67,91,250 has to be treated as capital gain, however while passing the order u/s. 154 it has been considered under the head income from other sources which is a mistake apparent from record. The CIT(A) also rejected the grounds of the assessee. The Id. AR therefore requested that the assessee should get opportunity for

substantiating its case before the AO. The assessee has filed written synopsis which is placed on record.

7. The Id. DR relied on the order of lower authorities.

8. Considering the rival submissions, we note that the assessee has sold agriculture land (capital asset) at Rs. 67,91,250 out of which Rs.8,00,000 has been claimed as cost of improvement and rest amount of Rs.59,91,250 has been claimed as exempt income. During the assessment proceedings, the AO noted that sale of land is a capital asset and income should be offered as long term capital gain. Accordingly the AO treated the entire receipt without giving any cost of improvement as long term capital gain. Further, for want of agricultural income, Rs.1,75,000 was added as unexplained money u/s. 69A of the Act. Against order u/s. 143(3) the assessee filed rectification application and AO passed order as noted supra. The Id. AR has submitted that no opportunity was given to the assessee before passing the order u/s. 154 and this issue has been raised before the CIT(Appeals). However, the CIT(A) has dismissed the appeal of the assessee. We note that the AO has passed a vague order u/s. 154 without discussing any of the issue and without following the provisions of section 154(3). While passing the OGE u/s. 154 r.w.s. 143(3), the addition made under the head capital gain during the assessment proceedings u/s. 143(3) has been considered under the head income from other sources. Therefore, there is enhancement of income of the assessee. In view of this considering the totality of facts and

circumstances of the case, we remit this issue back to the file of AO for fresh consideration the application filed by the assessee u/s. 154 of the Act and decide the issue as per law. The assessee is directed to produce necessary details and not seek unnecessary adjournment for early disposal of the case.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on this 23<sup>rd</sup> day of February, 2024.

Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER

Sd/-  
(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 23<sup>rd</sup> February, 2024.

*/Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.