

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI R.S.SYAL, VICE PRESIDENT
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 1977/Del/2014
ASSESSMENT YEAR-2009-10**

&

**ITA No. 6696/Del/2016
ASSESSMENT YEAR-2009-10**

Sh. Ram Niwas H.No.A-26, Sanjay Gram Opp. Sector 14 Gurgaon 122 002, Haryana PAN: ADHPN6950A	vs	ITO, Ward 2(1) Gurgaon
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(Appellant)

(Respondent)

Department by	Sh. Atiq Ahmad, Sr. DR.
Assessee by	Sh. Shyam Sunder Mangla, Adv.
Date of Hearing	14/08/2018
Date of Pronouncement	14 th August, 2018

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER:

Present appeals have been filed by assessee against order dated 29/01/2014 passed by Ld.CIT(A)-2, Faridabad and order dated 27/10/16 passed by Ld.CIT (A)-1, Gurgaon, for Assessment Year 2009-10 on the following grounds of appeal:

ITA No. 1977/Del/2014

**(AGAINST ORDER UNDER SECTION 250 DATED 29/01/2014
FOR A.Y- 2009-10)**

1. That the assessee denies his liability to be assessed at the total income of Rs. 32,24,600/- accordingly denies his liability to pay tax and interest thereon.
2. That having regards to the facts and circumstances of the case, the Hon'ble Commissioner of Income Tax (Appeals) is not right in confirming the impugned order framed by the Assessing officer under section 143(3).
3. That having regards to the facts and circumstances of the case, the Hon'ble Commissioner of Income Tax (Appeals) has erred in law and on facts by adding amount of Rs. 20,30,000/- on account of credit entries in SB A/c with ING Vyasa Bank.
4. That having regards to the facts and circumstances of the case, the Hon'ble Commissioner of Income Tax (Appeals) has erred in law and facts by adding amount of Rs. 2,95,000/- on account of unsecured loan.
5. That having regards to facts and circumstances of the case Ld. CIT (Appeals) has not complied with the provision of rule 46A to call such material on record.
6. That having regards to facts, The Ld. Commissioner of Income Tax (Appeals) has not complied the provision of sec. 250(6) to pass a speaking order.
7. That the Hon'ble Commissioner of Income Tax (Appeals) has not afforded proper opportunity to the appellant to explain the matter and whole order is arbitrary and against the principles of nature justice
8. That in any view of the matter and any case the order under appeal is bad in law and against the circumstances of the case.
9. That the appellant craves leave to add, Modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."

ITA No. 6696/Del/2016

(AGAINST ORDER UNDER SECTION 250(6) DATED 27/10/2016 FOR A.Y- 2009-10)

1. That the Ld. CIT CA) has substantially erred in law and on facts in confirming the impugned order passed by Ld. Assessing Officer under section 154.
2. That the Ld. CIT CA) has not afforded proper opportunity to the appellant to explain the matter and whole order is arbitrary and against the principles of nature justice.

3. *That in any view of the matter and any case the order under appeal is bad in law and against the circumstances of the case.*
4. *That the appellant craves leave to add, Modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.*

2. Brief facts of the case are as under:

Original assessment was completed under section 143 (3) of the Income Tax Act, 1961 (the Act) on 21/10/11, at assessed income of Rs.36,16,840/-, as against returned income of Rs.1,49,600/-.

Against addition, assessee preferred appeal before Ld.CIT(A) who gave partial relief to assessee. Upon giving effect to order passed by Ld.CIT (A), addition stood reduced to Rs.24,74,600/-.

2.1. Thereafter Ld.AO observed that during original assessment proceedings addition of Rs.7,45,000/- was made on account of loans/unsecured loans raised by assessee. Ld.AO up on perusal of records realised that the addition was wrongly made at Rs.7,45,000/-as against Rs. 8,45,500/-. As the mistake was apparent from record, notice under section 154 of the Act was issued to assessee on 03/02/15. Ld.AO upon considering the submissions of assessee made an addition of the difference of the amount being Rs.1,00,500/-.

2.2. Against order passed by Ld.AO under section 154, assessee preferred appeals before Ld.CIT (A), who dismissed the assessee's appeal.

2.3. Against the order of Ld. CIT (A) passed under section 154, assessee is in appeal before us now.

3. ITA No. 6696/Del/2016

All grounds raised by assessee in this appeal are regarding the validity of the order passed under section 154.

3.1. Ld.AR submitted that Assessing Officer cannot rectify his order which has got merged with order of Ld.CIT (A). He submitted that order passed under section 154 by Ld.AO after giving effect to order of Ld.CIT(A) is bad in law.

3.2. On the contrary Ld.Sr. DR submitted that totalling mistake is a mistake apparent on record, and Assessing Officer was correct in rectifying it by passing order under section 154 of the Act. He placed reliance upon the order of authorities below.

4. We have perused the submissions advanced by both the sides in the light of the records placed before us.

5. In our considered opinion to the present facts of this case, after giving effect of order passed by Ld.CIT(A), it was not appropriate on the part of Ld.AO to rectify the mistake in Assessment Order. In our view once Ld.CIT (A) passes first appellate order, assessment order merges with the same and any rectification that needs to be carried out is within the powers of Ld.CIT (A) in his order.

5.1. Thus in our considered opinion though there is a mistake apparent in Assessment Order, proceedings under section 154 initiated by Ld.A.O. is bad in law.

6. Accordingly the grounds raised by assessee in this appeal stands allowed.

7. ITA No. 1977/Del/2014

Present appeal has been filed by assessee against addition confirmed by Ld.CIT (A) in the quantum appeal.

7.1. Ld.AR submitted that **Ground No. 1, 2** are general in nature and therefore do not require any adjudication.

7.2. Ground No. 3 & 5

Ld.AR submitted that, additional evidences were filed before Ld.CIT (A) which were admitted, upon calling for a remand report from Assessing Officer. However, he submitted that evidences filed by assessee were not properly appreciated, as addition of Rs.20.3 Lacs was confirmed by Ld.CIT (A) on the basis that assessee failed to submit original family settlement document. He submitted that at the time when hearing before Ld.CIT (A) was going on, Shri. Vikrama Yadav in whose custody, original settlement document was lying was not traceable. Subsequently it has been submitted that Sh. Vikram Yadav by way of an affidavit has confirmed original family settlement document being handed over to assessee on 20/01/14. He submitted that, Ld.CIT (A) without appreciating these evidences confirmed action of Ld.AO.

7.3. At the outset Ld.AR prayed for the issue being set aside to Ld.AO for verification of relevant documents, and to decide issue afresh as per law.

7.4. Ld.Sr.DR did not object for the issue being set aside to Ld. AO for verification as per law on the basis of the original family settlement document.

7.5. Accordingly, considering the submissions made by both the sides, we direct Ld. AO to address this issue once again on the basis of the family settlement deed filed by assessee in original. Ld.AO shall carry out all necessary enquiries in order to ascertain

the correctness of the documents and then to decide the issue as per law.

7.6 Accordingly ground No.3 raised by assessee stands allowed for statistical purposes.

8. Ground No. 4 raised by assessee is regarding the addition of a sum of Rs.2,95,000/-on account of unsecured loan.

8.1. Ld.AR submitted that loan creditor being Mr.Raghbeer Sharma was relative of assessee, a military personnel and was posted in some remote area, because of which assessee could not produce him at the time of remand proceedings. He submitted that an affidavit also could not be procured from Mr.Raghbeer Sharma. Ld.AR submitted that this issue may also be remanded back to Ld.AO before whom assessee shall produce all relevant documents of establishing the creditworthiness, genuinity, identity of loan creditors herein.

8.2. Ld.Sr.DR did not object to the submissions of assessee.

8.3. Considering the above the submissions by both the sides, we are inclined to set aside this issue to Ld.AO. Assessee is directed to provide all relevant details regarding identity, creditworthiness of Mr.Raghbeer Sharma, and most importantly genuineness of the transaction before Ld.AO. Ld. AO shall then verify the details filed by assessee and considered the claim of assessee as per law.

8.4. Accordingly this ground raised by assessee stands allowed for statistical purposes.

9. Ground No. 5 is regarding the documents filed by assessee which has not been considered by Ld.CIT(A) even after admitting the same while deciding the issue. We have already dealt with the

relevant documents raised by assessee in relation to ground No. 3. As we have already set aside this issue to Ld.AO for verification on the basis of the documents filed by assessee, in our considered opinion separate adjudication on this ground does not call for.

10. In the result appeal filed by assessee stands allowed for statistical purposes.

Order pronounced in the open court on 14th August, 2018.

Sd/-

(R.S.SYAL)
VICE PRESIDENT

Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 14th August, 2018

*Gmv

Copy forwarded to: -

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

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

S.No.	Details	Date
1.	Draft dictated on	14.08.18
2.	Final Draft placed before author	14.08.18
3.	Draft proposed & placed before the Second Member	
4.	Draft discussed/approved by Second Member	
5.	Approved Draft comes to the Sr. PS/PS	
6.	Kept for pronouncement	
7.	Order uploaded on	
8.	File sent to Bench Clerk	
9.	Date on which the file goes to Head Clerk	
10.	Date on which file goes to A.R.	
11.	Date of Dispatch of order	