

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “G”, MUMBAI
Before Shri Pawan Singh (JM) & Shri S. Rifaur Rahman (A.M.)

ITA No. 6700/Mum/2018(Assessment year : 2010-11)

M/s Geeta Garden Consultants Pvt Ltd, Tenament No.19/002, Ground Floor, Link Road, MSB Colony, CTS No.1, Oshiwara, Jogeshwari (W), Mumbai 400 101 PAN :AAACG1755D	vs	ITO-9(3)(3), Mumbai
APPELLANT		RESPONDEDNT

Appellant by	Shri Rushabh Mehta AR
Respondent by	Shri V. Vinodkumar SR DR
Date of hearing	15-01-2020
Date of pronouncement	15-01-2020

ORDER

PER PAWAN SINGH, JM :

1. This appeal by assessee is directed against the order of learned commissioner of Income –tax (Appeals) [Id.CIT(A)]-16, Mumbai dated 28-09-2018, affirming the order of assessing officer passed under section (u/s) 154 of Income tax Act (Act) for assessment year 2010-11.

The assessee has raised the following grounds of appeal:-

“1 (a) The learned Commissioner of Income Tax (Appeals) erred in facts and law in confirming the action of the Id. Assessing Officer in rejecting the rectification petition filed by the assessee u/s. 154 of the Act without appreciating that there was a mistake apparent from record in the return of income filed by the assessee and consequently in the intimation processed u/s. 143(1) of the Act.

(b)The learned Commissioner of Income Tax (Appeals) erred in facts and law in not rectifying the mistake apparent from record by allegedly treating the rectification sought as an additional claim and thereby not re-computing the book profits u/s. 115JB of the Act and restating it at Rs.(-) 24,648A.”

2. Brief facts of the case are that the assessee filed rectification application before the AO on 04-05-2016 stating that the total income declared by the assessee comprised of profit on sale of agricultural land. Since the profit on sale of agricultural land is exempt, it was excluded from the total income while computing the tax liability as per normal provisions of the Income-tax Act, 1961 and that inadvertently, while computing the tax liability u/s 115JB, the same was not excluded and accordingly, advance-tax of Rs.4,85,000/- and self assessment tax of Rs.29,220/- was paid on the very same exempt income. The assessee, therefore, requested for refund of the prepaid taxes along with interest u/s 244A.
3. The assessing officer rejected the rectification application on the ground that the assessee itself shown book profit of Rs. 31,92,935/- u/s 115JB and paid tax, return was processed u/s 143(1) and as per section 143(1), it was mandatory for the AO to accept the return of income on the income returned by the assessee. The only remedy with the

assessee was to file revised return u/s 13(5), which the assessee failed to do within prescribed period of time limit.

4. On appeal before Ld. CIT(A) the action of AO was confirmed. The Ld. CIT(A) further concluded that rectification could be sought only by filing a revised return u/s 139(5) of the Act. And that there was no mistake apparent on record, as the return of income of the assessee was accepted. Further aggrieved, the assessee has filed this appeal before the Tribunal.
5. We have considered the arguments of the Ld. AR for the assessee and Ld. DR of the revenue and perused the material available on record. The Ld. AR for the assessee submits that while filing return of income the assessee has duly mentioned the profit on sale of asset. The said amount was reduced from computation of business income in Schedule BP, as any other exempt income. The exempt income is duly reflected in Row No. 6 of Schedule EI of Income tax Return Form. The amount of gain was earned on sale of agriculture land held by the assessee. However the same amount inadvertently remained to be reduced from computation of Minimum Alternative Tax (MAT). The income earned on sale of agriculture asset is exempt. The said mistake was noticed much later and accordingly the assessee made an application for

rectification of mistake, before assessing officer. The assessing officer rejected the application for rectification of mistake on the ground that the remedy available to the assessee is to file revised return under section 139(5) within period of limitation. The ld. AR for the assessee prayed that there was mistake apparent while passing the order under section 143(1) and the application of the assessee was wrongly rejected.

6. On the other hand the ld. DR for the revenue supported the order of the lower authority. The ld. DR for the revenue submits that the remedy available to the assessee was to file revised return under section 139(5) within period of limitation and to seek the alleged relief of exemption of capital gain.
7. We have considered the submissions of the parties and have gone through the orders of the lower authorities. The short point for our consideration is that once the assessee due to mistake either by inadvertent or erroneously declared a book profit, which is not in accordance with law can it be collected from the assessee. In our considered view the acquiescence cannot take away from a party, the relief, which he is entitled to where the tax is levied or collected without authority of law as held by Hon'ble Bombay High Court in *Nirmala L Mehta* [269 ITR 1 (Bom)] and *Balmukand Acharya* [310 ITR 310

(Bom)]. Therefore, considering the ratio of decision of Hon'ble Jurisdictional High Court we restore the issue back to the file of assessing officer, with the direction to examine the facts and decide the issue afresh and pass the order in accordance with law. The assessee is also directed to file all necessary information and evidence in support of his claim.

8. In the result the appeal of the assessee is allowed for statistical purpose.

9. Order pronounced in the open court on 15-01-2020.

Sd/-

Sd/-

(S. Rifaur Rahman)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 15th January, 2020

Pk/-

Copy to :

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

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai