आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ," बी "चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B', CHANDIGARH

श्री एन. के. सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI SANJAY GARG, JUDICIAL MEMBER

आयकरअपीलसं./**ITA No.43/CHD/2019**
निर्धारणवर्ष / Assessment Year : 2012-13

Shri Sandeep Bhargava ("HUF") H. No. 718, Sector 8B, Chandigarh	बनाम	The DCIT, Circle-1(1) Chandigarh
स्थायीलेखासं./PAN NO: AAWHS9024A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे/Assessee by : Shri Ashwani Kumar, CA
राजस्वकीओरसे/ Revenue by : Smt. Geetinder Mann, ACIT

सुनवाईकीतारीख/Date of Hearing : 22.01.2020
उदघोषणाकीतारीख/Date of Pronouncement : 06.07. 2020

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 20.11.2018 of the Commissioner of Income Tax (Appeals)-1, Chandigarh [hereinafter referred to as 'CIT (A)'].

2. The assessee in this appeal has taken following grounds of appeal:

1. *That the order passed u/s 250(6) by the Ld. CIT(A)-1, Chandigarh in appeal No. 10098/17-18 dated 20.11.2018 is contrary to law and facts of the case.*

2. *That in the facts and circumstances of the case, the Ld. CIT(A) gravelly erred in upholding the order passed by the Ld. Assessing Officer u/s 154 of the Income Tax Act, 1961 as the issue of allowance of benefit under section 54B of the Income Tax Act, 1961 was investigated by the Ld. Assessing Officer during the course of original assessment proceedings and has wrongly held that it is a mistake apparent form the record. It is not covered u/s 54 of the Income Tax Act, 1961.*

3. *That in the facts and circumstances of the case, the Ld. CIT(A) gravelly erred in upholding the action of the Ld. Assessing Officer who disallowed deduction of Rs. 2,58,80,697/- claimed under Section 54B of the Income Tax Act, 1961 by invoking the provisions of section 154 of the Income Tax Act, 1961.*

4. *That in the facts and circumstances of the case, the Ld. CIT(A) gravely erred in upholding the action of the Ld. Assessing Officer who has withdrawn deduction u/s 54B of the Income Tax Act, 1961.*

5. *The appellant craves leave to add or amend or alter any ground of appeal before or at the time of hearing of appeal, with the permission of the Hon'ble Income Tax Appellate Tribunal.*

3. The assessee in this appeal is aggrieved by the action of the Assessing Officer which is further confirmed by the CIT(A) in denying deduction claimed by the assessee u/s 54B of the Income Tax Act by way of rectification order passed u/s 154 of the Income Tax Act, 1961 (in short 'the Act').

4. The brief facts relevant to the issue are that the assessee, an 'HUF'(Hindu undivided family) filed its return of income declaring total income of Rs. 69,59,360/-, wherein, deductions u/s 54B and 54F of the Act have been claimed by the assessee. Scrutiny assessment proceedings were carried out u/s 143(3) of the Act. The Assessing Officer disallowed addition to an extent of Rs. 2,28,247/- out of transfer expenses / improvement cost, however, accepted the claim of deduction u/s 54B of the Income Tax Act. Later on, the AO vide order dated 5.7.2017 passed u/s 154 of the Act rejected the claim of deduction of the assessee u/s 54B of the Act observing that the assessee being 'HUF' was not entitled to claim of deduction u/s 54B of the Act on account of reinvestment made in purchase of agricultural land as the same for the assessment year under consideration i.e. assessment year 2012-13 was not available to an 'HUF'.

As per the provisions of section 54B of the Act, as applicable for A.Y. 2012-13, where the capital gain arises to an assessee from transfer of a capital asset being land, which, in the two years immediately preceding the date on which transfer took place, was being used by the assessee or a parent of his for agricultural purpose and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then, the deduction provided u/s 54B of the Act is available to such an assessee. However, for the assessment year 2013-14 onwards vide Finance Act,

2012 w.e.f. 1.4.2013, the 'HUF' has also been added as eligible for claiming deduction.

The Assessing Officer in this case observed that since the assessment year under consideration was assessment year 2012-13, hence, such deduction was available only to an individual assessee on the land used for agricultural purposes by him or a parent of his. On the other hand, the contention of the Ld. Counsel for the assessee has been that the amendment carried out to section 54B making the deduction available to an 'HUF' also, is clarificatory and curative in nature, hence, the same is to be applied retrospectively. The Assessing Officer, however, observed that the said amendment was prospective in nature. He, therefore, observed that a mistake apparent on record has occurred in the assessment order dated 17.3.2015 passed by him u/s 143(3) of the Act in allowing the deduction u/s 54B of the Act. He, accordingly passed the impugned rectification order withdrawing the deduction u/s 54B of the Act to the assessee.

5. Being aggrieved by the above rectification order passed by the Assessing Officer, the assessee preferred appeal before the Ld. CIT(A) but remained unsuccessful, hence, this appeal before this Tribunal.

6. The Ld. Counsel for the assessee has submitted that deduction already allowed to the assessee in the scrutiny assessment proceedings

u/s 143(3) of the Act could not have been taken back by Assessing Officer by way of rectification order passed u/s 154 of the Act. He has submitted that the powers of the Assessing Officer to rectify an order u/s 154 of the Act are very limited and that this can be exercised only in case of a mistake apparent on record. That the order cannot be amended / recalled or revised on a debatable issue merely because of change of opinion of the Assessing Officer on such an issue.

7. On the other hand, the Ld. DR has submitted that since as per the Finance Act 2012, the amendment in question has been made applicable prospectively from 1.4.2013, therefore, the Assessing Officer has rightly exercised his powers u/s 154 of the Act and that there was no error in the impugned order passed by the Assessing Officer.

8. We have heard the rival contentions of the Ld. Authorized Representatives of both the parties and have gone through the record. Admittedly, the issue relating to availability of deduction u/s 54B of the Act was duly examined by the Assessing Officer in the scrutiny assessment proceedings carried out u/s 143(3) of the Act and he after considering the claim of the assessee had allowed the same making some disallowances out of the impugned expenses etc. It is not a case where the Assessing Officer had not applied his mind to the issue under consideration. However, later on, the Assessing Officer confirmed the

view that the deduction was not allowable to an 'HUF' for the assessment year 2012-13 as the same has been made available to a 'HUF' by Finance Act 2012 w.e.f. 1.4.2013. He, therefore, held that a mistake apparent on record had occurred in the assessment order dated 17.3.2015 passed u/s 143(3) of the Act.

However, we find from the provisions of section 54B of the Act, as applicable for assessment year 2012-13, that the same are loosely worded. The relevant part of the said provisions is reproduced as under:-

> ***"Capital gain on transfer of land used for agricultural purposes not to be charged in certain cases.***
>
> ***54B.*** *[(1)] [Subject to the provisions of sub-section (2), where the capital gain arises] from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee or a parent of his for agricultural purposes [(hereinafter referred to as the original asset)], and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—*
>
> *(i) ……"*

A perusal of the above provisions reveal that deduction u/s 54B of the Act is available –

(i) Where capital gain arises on transfer, of a capital asset being the land;

(ii) such land was being used for agricultural purposes by the assessee or a parent of his for the last two years, from the date of transfer of land ;

(iii) assessee has, within a period of 2 years after the date of transfer, purchased any other land for being used for agricultural purposes.

9. A perusal of the wording of the section reveals that deduction u/s 54B is available to an **"assessee**" if the land was used for agricultural purpose by the assessee or a parent of his. Our stress is on the word "assessee" which has been substituted with words "assessee being an individual" in the amended provisions. In the amended provision w.e.f. 1.4.2013, the relevant wording is "if the capital asset being a land used for agricultural purposes by the assessee being an individual or parent of his or a HUF". In the amended provisions, the word "assessee" has been qualified with words "being an individual" and further 'HUF' has been added in category of users of the land for agriculture purposes for an as to claim deduction u/s 54B of the Act. In our view, it is a highly debatable issue whether the word 'assessee' means an individual only or it includes an 'HUF' also in the pre-amendment provisions. In the amended section 54B of the Act as amended by Finance Act 2012, it has been specifically mentioned that the "assessee being an individual or his parent or a HUF". However, no such words as "assessee being an

individual" finds mention in section 54B prior to such amendment, the wording prior to amendment was, "assessee or a parent of his". As per the provisions of the Income Tax Act, the assessee inter alia can be an individual or an 'HUF' also. Moreover, as per amended provisions deduction is available to the **"assessee"** if the land is **used** for agricultural purposes by the assessee himself or by his parent or an 'HUF'. What is noted is that amendment has been carried out in respect of 'user' of the land not in respect of the claimant / assessee whose income is assessed. It is also a well-known fact that in the land record maintained by the Land Revenue Department, ownership of property is entered in the name of an individual and not in the name of 'HUF' and that the 'HUF' claim of ownership over such a property by virtue of the property being ancestral and put into the common hotchpotch of the family. Under the circumstances, the issue being highly debatable and requires lengthy arguments.

It is a settled law that powers of the Assessing Officer to rectify an order u/s 154 are very limited and can be exercised only in a case where the Assessing Officer finds that a mistake apparent on record had occurred. However, in the case of a debatable issue or where the lengthy arguments are needed to decide the issue, powers u/s 154 of the Act can not be exercised to amend an already passed order. It has also been held time and again that powers u/s 154 of the Act cannot be

exercised on change of opinion by the Assessing Officer on an issue relating to any admissibility of a claim.

10. The Assessing Officer, thus, in our view was, not justified in passing the impugned order u/s 154 of the Act with limited jurisdiction of rectification of order in the case of a 'mistake apparent on record' in the order. The Hon'ble Bombay High Court in the case of 'Commissioner Of Income-Tax vs Ramesh Electric And Trading Co.' (1993) 203 ITR 497 (Bom.), wherein, the Hon'ble High Court while relying upon the decision of the Hon'ble Supreme Court in the case of 'T. S. Balaram, ITO v. Volkart Brothers' [1971] 82 ITR 50 and further relying upon the decisions of the various High Courts has categorically held that the power of rectification under section 254(2) of the Income-tax Act can be exercised only when the mistake which is sought to be rectified is an obvious and patent; mistake which is apparent from the record, and not a mistake which requires to be established by arguments and a long drawn process of reasoning on points on which there may conceivably be two opinions. The said proposition can be rightly applied to identical provisions of section 154 of the Act dealing with the rectification powers of the Income Tax Authorities.

11. In view of this, the rectification order passed by the Assessing Officer and further confirmed by the CIT(A) cannot be held to be justified. Therefore, the impugned orders of the CIT(A) and the

Assessing Officer are hereby set aside and the original order passed by the Assessing Officer dated 17.3.2015 u/s 143(3) of the Act is hereby restored.

In the result, the appeal of the assessee stands allowed.

Order could not be pronounced earlier due to non-functioning of the Bench on account of curfew / lockdown in the wake of Covid-19 Pandemic.

Order pronounced on 06.07.2020.

Sd/-	**Sd/-**
(एन. के. सैनी / N.K. SAINI)	**(संजय गर्ग / SANJAY GARG)**
उपाध्यक्ष /Vice President	**न्यायिकसदस्य/ Judicial Member**

Dated : 06.07.2020

"आर.के."

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar