

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री संदीप गोसाईं, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI N.K. SAINI, VICE PRESIDENT & SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ ITA No. 141/JP/2018  
निर्धारण वर्ष / Assessment Year :2011-12

Shimla Devi, W/o- Sh. Ghanshyam Lal, C/o-C.M. Gupta, D-6, Station Road, Hindaun City-322230.	बनाम Vs.	I.T.O., Ward- Karauli.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AXHPJ 8133 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)  
राजस्व की ओर से / Revenue by : Ms. Chanchal Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 14/09/2020  
उदघोषणा की तारीख / Date of Pronouncement : 14/09/2020

आदेश / ORDER

**PER: SANDEEP GOSAIN, J.M.**

The present appeal has been filed by the assessee against the order of the Id. CIT(A), Alwar dated 21/11/2017 for the A.Y. 2011-12. Following grounds have been taken by the assessee:

- "1. That, the Id. CIT(A) grossly erred in deciding the application and not accepting the application u/s 154, without providing an opportunity of hearing, in spite of specific prayer was made in the application u/s 154. Therefore, this order may kindly be set aside for passing fresh order after allowing opportunity to the appellant.
2. That, prejudice to be above, the Id. CIT(A) was not justified in not adjudicating upon each and every mistakes pointed out in the application u/s 154 on different grounds, but not accepting the same and rejected in mechanical manner, and also assuming wrong facts. Therefore, on this ground also the order

*passed may kindly be set aside and direct as necessary kindly be given for deciding the same, after allowing opportunity to the appellant.*

3. *That, it is further prayed that the issue raised in the application u/s 154 filed before the Id. CIT(A) may kindly be decided by the Hon'ble Tribunal."*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. The main grievance of the assessee raised in this appeal relates to dismissing of application moved u/s 154 of the Act by the Id. CIT(A) without giving him proper opportunity of hearing.

4. Facts in brief are that the assessee had not filed her return of income for the year under consideration as she had sold an immovable property for Rs. 7,25,000/- which for stamp duty purpose was assessed by the Sub-Registrar at Rs. 10,54,000/-. Accordingly, A.O. issued notice U/s 148 of the Income Tax Act, 1961 (in short, the Act) to the assessee. Thereafter, the assessee filed objections against the said notice issued U/s 148 of the Act but the A.O. made additions on account of long term capital gain of Rs. 10,54,000/-

5. Aggrieved by the order of A.O. the assessee preferred appeal before the Id. CIT(A), however, the Id. CIT(A) has disposed of the appeal filed by the assessee vide order dated 28/04/2017 by giving following findings:

- (a) The AO is justified in issuing notice u/s 147 of the Act on the strength of the information in his possession. So far as the contention that the objections raised was not disposed of, such necessity is required in the case where regular assessment is reopened u/s 147 of the Act and not in a case where the assessee did not file the return of income at all.
- (b) The AO has rightly invoked provisions of section 50C and accordingly, addition of Rs.10,54,000/- is sustained.

Aggrieved by the decision of the Id. CIT(A), assessee filed an application u/s 154 dated. 07.06.2017 pointing out the legal mistake as also the factual mistake in his order. However, the Id. CIT(A) disposed the said application filed by the assessee. Against this order of the Id. CIT(A), the assessee preferred the present appeal before the ITAT on the grounds mentioned hereinabove.

6. Ground No. 1 raised by the assessee relates to challenging the order of the Id. CIT(A) in deciding the application of the assessee U/s 154 of the Act without providing opportunity of hearing. The Id. AR in this respect, relied upon the submissions made by him before the Id. CIT(A) whereby the Id AR had pointed out the legal as well as factual mistakes in the order passed by the Id. CIT(A). The submissions made by the Id. AR before the Id. CIT(A) while arguing his application U/s 154 of the Act are reproduced below.

"From the facts stated above, it can be noted that assessee has specifically pointed out two mistakes. The first is a legal mistake and second is a factual mistake. Each of these mistakes as borne out from the record is explained hereunder:-

#### Legal Mistake

- (a) The Supreme Court in case of GKN Driveshaft India Pvt. Ltd. Vs. ITO 259 ITR 19 has held that once the assessee has filed objections against the reopening of assessment, the AO has to disposed of those objections by passing the speaking order. There is no dispute as to the fact that assessee has filed the objections and the AO has not disposed of those objections. This is accepted by Ld. CIT(A) also. Still he has uphold the validity of order passed u/s 147 by mistakenly holding that such necessity would not arise where the assessee had not earlier filed the return of income. It may be noted that Hon'ble Rajasthan High Court in case of K.C. Mercantile Vs. DCIT DBITA No.292/2016 dt. 07.11.2017 has held that in case the objections are not disposed of, the order of reassessment is to be declared null and void. Hence, not following the decision of Supreme Court/ Rajasthan High Court is a mistake apparent on record and on this ground itself, the entire reassessment proceedings is illegal & bad in law.

#### Factual Mistake

- (a) The assessee has purchased the land on 11.08.2008 (PB 8-15 of Paper Book-I). The cost of land to the assessee is Rs.4,23,760/- (4,00,000+ 23,760). On this land assessee incurred expenditure of Rs.90,000/- on account of levelling and kacchi boundary. Thus, the total cost of land to the assessee as on 31.03.2010 is Rs.5,18,760/- (PB 7A of Paper Book-I).

- (b) This land was sold by assessee on 21.07.2010 for Rs.7,25,000/- (PB 17-29 of Paper Book-I). However, for stamp duty purpose its value was assessed at Rs.10,54,000/-(68\*15,500) by taking the land rate at Rs.15,500/- per bigha by considering it to be irrigated land whereas the land is a barani land for which the applicable rate is Rs.11,000/- per bigha, i.e. Rs.7,48,000/- (68\*11,000) (PB 32-33 of Paper Book-I).
- (c) Since the assessee has sold it within 2 years with no intention to hold it as a capital asset, it has declared income of Rs.1,84,490/- as business income (PB 16 of Paper Book-I). However, the AO has considered it to be a long term capital asset whereas it is a short term capital asset even if the contention of AO is to be accepted. Further, the deemed value u/s 50C of Rs.10,54,000/- is included in income without reducing the cost of acquisition and the income from business declared by the assessee. These factual aspects have not been looked into by Ld. CIT(A). Also the matter was not referred to DVO when it is a fact on record that the land sold is a barani land and not an irrigated land.
- (d) The above are mistake apparent on record which the Ld.CIT(A)has failed to consider even when all the material is on record before him.”

It was submitted that the Id. CIT(A) had not passed any 'speaking order' and had not provided an opportunity to the assessee while rejecting application filed U/s 154 of the Act.

7. On the other hand, the Id DR has relied on the order passed by the Id. CIT(A) while rejecting application filed by the assessee U/s 154 of the Act.

8. We have heard the rival contentions of both the parties and have perused the material placed on record as well as the orders passed by the

revenue authorities. Before we decide the merits of this ground raised by the assessee, it is necessary and imperative to evaluate the order passed by the Id. CIT(A) while disposing of application U/s 154 of the Act filed by the assessee. The order of the Id. CIT(A) is reproduced below:

*"3. I have gone through the application filed by the appellant and the material available on record. Since the materials on record have already been considered while adjudicating on the grounds of appeal mentioned in the rectification application, I find no reason to revisit the issues again."*

After having gone through the order passed by the Id. CIT(A) while disposing of the application of the assessee U/s 154 of the Act. We noticed that the Id. CIT(A) has not passed any 'speaking order' in respect of the mistakes pointed out by the assessee. As per assessee, there was legal as well as factual mistakes in the order passed by the Id. CIT(A) which were pointed out by the assessee and the same has already been reproduced in the written submissions of the assessee mentioned above. In our view, passing a 'speaking order or reasoned order' is considered as third limb of natural justice. As per India legal system, the maxims "Nemo debet esse judex in propria causa" and "Audi alterem partem" are considered the two limbs of natural justice and passing of 'speaking order or reasoned order' is considered as a third limb of natural justice. In our view, the characteristics of a speaking order is that, it should contain adequate and sufficient reasons in support of the decision. The need of the hour is to pass

a speaking order by all quasi judicial authorities as it entitles the parties with the reason for the decision, apart from the decision itself and also gives satisfaction to the person against whom the decision has been given. It also enables the person against whom the decision has been given to examine and use his right of appeal effectively. "The principles of nature justice and fair play inaction" requires recording of reasons and as per the order passed by the Id. CIT(A) while rejecting the application of the assessee U/s 154 of the Act, we see that the Id. CIT(A) has not passed any 'reasoned or speaking order'. Be that as it may, taking into consideration the legal proposition as discussed by us above, we restore the matter back to the file of the Id. CIT(A) to be adjudicated and decided application U/s 154 of the Act afresh in accordance with law after passing a 'speaking order' after providing due and reasonable opportunity of hearing to the assessee.

9. In the result, appeal of the assessee is allowed for statistical purposes in terms indicated above.

Order pronounced in the open court on 14<sup>th</sup> September, 2020.

Sd/-  
(एन.के.सैनी)  
(N.K. SAINI)  
उपाध्यक्ष / Vice President

Sd/-  
(संदीप गोसाईं)  
(SANDEEP GOSAIN)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- 14/09/2020  
\*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Smt. Shimla Devi, Hindaun City.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward- Karauli.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 141/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar