

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

[Coram: Pramod Kumar, (Vice President)]

ITA No. 365/Mum/2020
Assessment Year: 2015-16

Jagjyot SinghAppellant
A-1, 303, Akal CHS, J.B Nagar, Andheri (E)
Mumbai 400059 [PAN: BKHPS7576P]

Vs

Income Tax Officer – 24(2)(2)
MumbaiRespondent

Appearances:

Hardik Shah for the Appellant
C.T Mathews for the Respondent

Date of conclusion of hearing : 26.11.2021
Date of pronouncement of order : 10.02.2022

ORDER

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee-appellant has challenged correctness of the order dated 4th December 2019 passed by the learned CIT(A) in the matter of rectification proceedings under section 154 r.ws. 250 of the Income Tax Act, 1961, for the assessment year 2015-16.

2. Grievances, as set out in the memorandum of appeal, are as follows:-

1. On the facts and the circumstances of the appellant's case and in law the learned CIT(A) erred in confirming the AO's action of total income as Rs. 16,23,390.

2. On the facts and the circumstances of the appellant's case and in law the learned CIT(A) erred in confirming the AO's action of long term capital gain on sale of immovable property as short term capital gain.

3. On the facts and the circumstances of the appellant's case and in law the learned CIT(A) erred in taking acquisition date i.e. allotment date as 26.11.2011 instead of 21.07.2011.

4. On the facts and the circumstances of the appellant's case and in law the learned CIT(A) erred in confirming the AO's action of disallowing exemption claimed u/s. 54 on purchase of house property within one year on account of long term capital gain arising from the sale of house property.

3. To adjudicate on this appeal, only a very few material facts need to be taken note of. The assessee, an individual, was in appellate proceedings before the learned CIT(A) on the short point as to whether the gains on sale of immovable property are required to be treated as long term capital gains or short term capital gains. During these proceedings, the assessee, *inter alia*, submitted that “the date of allotment is 26.11.2011 (FY 2011-12) and date of sale of property 7.8.2014. Therefore, the holding period is more than 36 months. Therefore, the capital gains earned by the assessee is to be treated as long term capital gain”. This plea was rejected by the CIT(A) on the ground that “In this case, the house property is sold after holding it for less than 36 months (32 months and 12 days to be exact) and hence it is a short term capital asset”. The assessee then moved a rectification petition pointing out that this date of 26.11.2011 was wrongly given in the place of 26.7.2011 on which the assessee had paid Rs. 23,95,430 vide cheques on Indian Overseas Bank. This rectification petition was rejected by the CIT(A) on the ground that the assessee had duly authorized a representative who has made a submission and it was duly accepted, and, as such, accepting the said explanation cannot be said to be a mistake apparent on record. The assessee is aggrieved and is in appeal before me.

4. I have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position.

5. I find that the plea of the assessee before the CIT(A) was quite incongruous to the extent that the gap between the two dates i.e. 26.11.2011 and 7.8.2014 was quite clearly less than three years, and given that position, the case was not made for long term capital gains. The mistake in date cannot therefore be ruled out. Given that position, it was not really correct on the part of the CIT(A) to proceed on the basis that the claim of the assessee for correct date could not be entertained when that is discernable from the material on record. Such a hyper pedantic approach, that too in the case of an individual taxpayer, does not advance the cause of justice. Whether this mistake due to lapse of the counsel or of the assessee, if it's a mistake apparent on record, the consequences must follow. I, therefore, deem it fit and proper to direct the CIT(A) to admit the plea of the assessee for examination on merits. Ordered, accordingly. The order dated

4.12.2019 thus stands vacated, and the original CIT(A)'s order dated 28.6.2019, thus stands modified to be extent that this plea of the assessee will have to be examined merits.

6. In the result, the appeal is allowed for statistical purposes in the terms indicated above. Pronounced in the open court today on the 10th day of February 2022.

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 10th day of February 2022.

Copies to:

(1)	<i>The Appellant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order

*Assistant Registrar/Sr.PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai*