

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No.638/SRT/2018 (AY 2012-13)

(Hearing in Virtual Court)

Mukesh A.Patel, Ambalal Ni Wadi, Station Road, Nr. College, Killa Pardi, Vapi. PAN: BJHPP 0041 D	Vs	The Income Tax Officer, Ward-6, Vapi.
Appellant/ Revenue		Respondent/ Assessee

Assessee by	Shri Surji Chheda – CA
Revenue by	Shri Sta Ram Meena – Sr.DR
Date of hearing	15/02/2022
Date of pronouncement	15/02/2022

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals), Valsad dated 17.07.2018 for the Assessment Year (A.Y.) 2012-13. The assessee has raised the following grounds of appeal:

“1) The Learned CIT (A) has erred in law and facts to held that current appeal on the same issue for the same Assessment Year is pending for the adjudication & hence the appeal is infructuous.

2) The Learned CIT (A) has erred in law and facts to held that valuation report received after the completion of the assessment order becomes part of the record and the same can be considered for rectification u/s 154 of the act.

3) The Learned CIT (A) has erred in law and facts to confirm the rectification made by the learned A.O.O in the assessment order u/s 154 on the basis of

Valuation Report of DVO and treating the matter of valuation as mistake apparent from record.

- 4) *The Learned CIT (A) has erred in law and facts to confirm action of the learned A.O. to take the value as per DVO report in spite of the fact that the power of valuation has come back to A.O. if it was not determined by DVO before assessment and report of DVO cannot be utilized for assessment if the valuation was not completed before the assessment and valuation report cannot be considered for rectification u/s 154 of the act.*
- 5) *The appellant leaves the right to amend, add or alter the ground at the time of regular hearing.”*

2. Brief facts of the case are that assessment for the A.Y. 2012-13 under section 143(3) r.w.s 147 of the Act was completed on 31.03.2016. During the assessment, the Assessing Officer (AO) noted that assessee sold immovable property and for calculation/ working of Capital Gain, adopted the Fair Market Value (FMV) of property as on 01.04.1981 @ Rs. 80 per square metre. The AO adopted the value of land on the basis of report of registered valuer. The AO was of the view that assessee has considered the higher value to reduce the capital gain, therefore, a reference was made to District Valuation Officer(DVO) for valuation of property. The Report of valuer was not received by the AO till 31.03.2016, the case was getting time barred. The AO passed the assessment order vide order dated 31.03.2016. The AO while passing assessment order adopted average value @Rs.34.58 per sq.mtr on the

basis of report called from Sub-Registrar Office, Killa Pardi and computed Long Term Capital Gain of Rs.35,33,01/- and after allowing exemption under section 54B of the Act of Rs.2,45,950/-, brought the remaining capital gain of Rs.32,87,131/- to tax.

3. The Valuation Report of DVO was received by the AO on 13.12.2016 wherein the DVO suggested rate @10.15 per square metre. The AO on the basis of report of DVO, issued notice under section 154 of the Act revising/rectifying the rate From Rs.34.58 per sq.mtre to Rs.10.15 per square metre. The notice under section 154 of the Act was contested by assessee by filing his reply vide reply dated 31.01.2017. The assessee in his reply contended that rectification under section 154 of the Act can be made only for the mistake which is apparent from the record and any order where two views are possible. The assessee further stated that against the value determined by the AO, the assessee has already filed appeal before the Id.CIT(A). The valuation report received after assessment order has only persuasive value and cannot be applied for rectification. The reply/objection of the assessee was not accepted by the AO. The AO passed the order under section 154 of the Act by adopting the rate suggested by the DVO and recomputed Long Term Capital Gain. Aggrieved by the order of AO passed under section 154 of the Act, the assessee filed appeal before the Id.CIT(A).

4. Before the Id.CIT(A), the assessee filed almost similar submission as submitted before the AO. In addition to that, the assessee further submitted that the AO failed to appreciate the fact that matter of valuation on 01.04.1981 of Rs.34.58 per square metre is already under appeal before the Id.CIT(A), Valsad. And the same cannot be considered as a mistake apparent from the record. The Id.CIT(A) after considering the submission of the assessee held that valuation report received after completion of the assessment order became part of record and the same can be considered for rectification. The appeal before him in quantum assessment for the A.Y. 2012-13 pertaining to the issue of addition on account of capital gain, thus, the current appeal on the same issue has become infructuous and dismissed the same. Further aggrieved, the assessee has filed the present appeal before this Tribunal.
5. We have heard the submission of Id. Authorised Representaitve (Id.AR) of the assessee and the Id. Senior Departmental Representative (Id.Sr.DR) for the Revenue. The Id.AR of the assessee submits that the order passed under section 154 of the Act is passed without authority of law. The assessment order was passed on 31.0.2016, is not based on the report of the valuer. In other way, the report of valuer was not available before the AO, thus, subsequent receipt of report cannot be said to be a part of assessment record wherein the assessment order already has been passed and communicated to

the assessee. Since the assessment order is not based on the valuation report of DVO and as such there was no mistake apparent in the assessment order dated 31.03.2016. Thus, the AO has no jurisdiction to pass the rectification order on the basis of such record. The ld.CIT(A) also wrongly held that once appeal is pending before him, the issue has become infructuous. The AO passed the order without any authority of law.

6. On the other hand, the ld.Sr.DR for the Revenue supported the order of Lower Authorities. The ld.Sr.DR for the Revenue submits that assessment order passed under section 143(3) r.w.s 147 dated 31.03.2016, the rectification order passed on 16.02.2017 and the order of ld.CIT(A) dated 17.07.2018 are before the Hon'ble Bench and the Bench may take decision in accordance with law.
7. We have considered the submission of both the parties and perused the material available on record. It is an admitted fact that at the time of passing the assessment order under section 143(3) r.w.s 147 on 31.03.2016, the report of DVO was not received. Admittedly, the AO passed the order without having benefit of report of DVO. The report of DVO was received subsequently. In the meantime, the assessee has already filed appeal against the additions Long Term Capital Gain worked out by the AO. Since the assessment order was not based on DVO Report, therefore, the rectification order passed by the AO in revising the assessment order under the garb of

power under section 154 of the Act is not justifiable. The AO exceeded his jurisdiction, therefore, the order under section 154 of the Act dated 06.02.2017 is quashed, accordingly, grounds raised by the assessee are allowed.

8. In the result, appeal of the Assessee is Allowed.

Order announced on 15th February, 2022 in open court and result was placed on the notice board.

Sd/-
(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat Dated: 15/02/2022 /SGR*

Copy to:

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

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

By Order

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Sr.Pvt.Secretary, ITAT Surat