

आयकर अपीलिय अधिकरण  
मुंबई पीठ "एच"  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री गगन गोयल, लेखा सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
आअसं.1665/मुं/2021 (नि.व. 2011-12)  
ITA NO.1665/MUM/2021(A.Y.2011-12)

Kalpana Vinod Paymaster,  
151,Buena Vista, Gen.J.Bhosle Marg,  
Near Mantralaya, Mumbai – 400 018.  
PAN: AJSP-0625-P

..... अपीलार्थी /Appellant

बनाम Vs.

A.C.I.T, CIRCLE -35(1),  
Kautalya Bhavan, B.K.C, Bandra (E)  
Mumbai 400 051.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Dinkle Hariya

प्रतिवादी द्वारा/Respondent by : Shri Uodal Raj Singh

सुनवाई की तिथि/ Date of hearing : 21/03/2022

घोषणा की तिथि/ Date of pronouncement : 21/03/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 23/07/2021, for the assessment year 2011-12.

2. The issue arising in this appeal emanates from the rectification petition u/s. 154 of the Income Tax Act,1961 ( in short 'the Act') filed by the assessee against the order dated 18/09/2014 levying penalty u/s. 271(1)(c) of the Act.

3. The brief facts of the case as emanating from records are: The Assessing Officer passed order u/s. 271(1)(c) of the Act dated 18/09/2014 levying penalty in respect of the additions made during the assessment proceedings. Ms. Dinkle Hariya appearing on behalf of the assessee submitted that while passing assessment order, the Assessing Officer allowed the claim of set off of long term capital loss of Rs.1,81,499/- against long term capital gain of Rs.25,32,371/- in a suo-motu rectification order dated 14/07/2014. Further, the Assessing Officer while passing the assessment order dated 24/03/2014 allowed the benefit of deduction of Rs.1,25,000/- u/s.80GGA of the Act. The assessee in the revised computation of income filed at the time of assessment offered long term capital gain of Rs.23,50,872/- at a special rate of 10% without indexation benefit. The claim of the assessee was accepted by the Assessing Officer and thus, total tax demand was determined at Rs.4,18,800/-. This fact is evident from the demand notice dated 24/03/2014 issued u/s. 156 of the Act. The said amount was paid by the assessee as self assessment tax. The Assessing Officer in penalty order while computing penalty applied rate of 20% on long term capital gains and levied penalty of Rs.6,22,590/-. The assessee filed rectification petition highlighting the errors apparent on record while computing penalty. The Assessing Officer vide order dated 03/02/2017 dismissed assessee's petition for rectification u/s. 154 of the Act. Aggrieved by the order dated 03/02/2017 passed u/s.154 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) vide impugned order without appreciating the facts and the submissions of the assessee dismissed the appeal of assessee, hence, the present appeal.

4. Shri Uodal Raj Singh Representing the Department vehemently defended the impugned order and prayed for dismissing appeal of the assessee.

5. Both sides heard, orders of authorities below examined. During the course of assessment proceedings the Assessing Officer, inter-alia, made addition in respect of long term capital gain. The Assessing Officer initiated penalty proceedings u/s. 271(1)(c) of the Act in respect of the aforesaid addition. While passing the penalty order u/s. 271(1)(c) of the Act the Assessing Officer computed tax on long term capital gains @ 20%, whereas, during assessment proceedings the long term capital gain was offered to tax by the assessee at special rate of 10% without indexation benefit and the same was accepted by the Assessing Officer. A further perusal of the assessment order reveals that the assessee's claim of loss of previous year Rs.1,81,499/- and set off of deduction u/s. 80GGA was accepted by the Assessing Officer. However, while passing the order levying penalty neither the benefit of deduction u/s. 80GGA nor the set off of long term capital loss against long term capital gain was allowed by the Assessing Officer. Further, the Assessing Officer computed tax on long term capital gains @20% instead of special rate of 10% without indexation benefit. These mistakes apparent on record were pointed to the Assessing Officer by assessee vide rectification petition filed u/s. 154 of the Act. The Assessing Officer rejected the petition by observing that the mistakes pointed by the assessee are not evident from the penalty order. After having considered the discrepancies pointed by the Id.Counsel for the assessee in the order u/s. 271(1)(c) of the Act, we are satisfied that the mistakes pointed by the Id.Counsel for the assessee are apparent/blatant which could have been rectified by the Assessing Officer

exercising powers u/s. 154 of the Act. We find merit in the submissions made by Id.Counsel for the assessee, consequently, the appeal of the assessee is allowed and impugned order is set-aside. The Assessing Officer is directed to rectify the aforementioned mistakes apparent in the order passed u/s. 271(1)(c) of the Act dated 18/09/2014.

6. In the result, appeal by assessee is allowed.

Order pronounced in the open court on Monday the 21<sup>st</sup> day of March, 2022.

Sd/-

( GAGAN GOYAL )

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 21/03/2022

Vm, Sr. PS(O/S)

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)

**ITAT, Mumbai**