

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 02/Del/2019
(Assessment Year: 2012-13)

Neeraj Kumar Jain, C-89, Ashok Vihar, Shakti Nagar Extn, New Delhi PAN: AAIPJ9521D (Appellant)	Vs. ACIT, Circle-34(1), New Delhi (Respondent)
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Assessee by :	Shri Ved Jain, Adv
Revenue by:	Shri N. C. Swain, CIT DR

Date of Hearing	23/05/2022
Date of pronouncement	31/05/2022

O R D E R

PER ANUBHAV SHARMA, J. M.:

1. The appeal has been preferred by the Assessee against the order dated 27.09.2018 of Ld Commissioner of Income Tax (Appeals)-12, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No. 48/17-18 arising out of an appeal before it against the order dated 15.05.2017 u/s 154 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') passed by the Id. Assessing Officer, ACIT, Circle-34(1), New Delhi (hereinafter referred as the Ld. AO).

2. Facts in brief are that the assessee (Sh. Neeraj Kumar Jain) and Sh. Dhanesh Kumar Jain are the co-owners of the agricultural land and they both equally received the interest of Rs. 46,41,898/- each paid by the Land Collector-Rohtak as a compensation for the acquisition of agricultural land and the entire interest was declared under the head income from other sources as per the section 56(2)(viii) of the Act while filing the return of income on 20.09.2012 (PB pg. 3). However, the assessee inadvertently missed to claim

deduction u/s 57(iv) of the Act, on the interest received on account of late receipt of compensation of Rs. 46,41,898/- during the year. The Assessee has declared the income u/s 56(2)(viii) of the Act and is consequentially entitled to claim statutory deduction u/s 57(iv) of the Act which he has inadvertently missed to claim in the return of income. The above return of income was subsequently processed u/s 143(1) by CPC vide order dated 25.01.2013. Thereafter, an application u/s 154 was filed by the Assessee on 08.09.2015 seeking the claim of deduction u/s 57(iv) of the Act amounting to Rs. 23,20,949/- to which the AO passed an order on 15.05.2017 rejecting the rectification as not being a mistake apparent on record. However, the Id CIT(A) denied the appeal of the Assessee holding that the non-claim of deduction u/s 57(iv) on interest received on compensation for land acquired is not a mistake apparent from the record.

3. The Assessee has raised the following grounds of appeal:-

- “1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax(Appeals) [CIT(A)] is bad both in the eye of law and on facts.*
- 2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of Assessing officer (AO) rejecting the application filed by the assessee under section 154 of the Income Tax Act requesting for rectification of mistake apparent on record.*
- 3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO holding the claim of deduction under section 57(iv) made by the assessee is not a make apparent from record, despite the assessee being eligible for the same.*
- 4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the non-claim of deduction under section 57(iv) on account of interest received on late receipt of compensation for land acquired by Haryana Government is mistake apparent from record, rectifiable under section 154 of the Act.*
- 5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that revenue is duty bound to assess the correct income and must not take advantage of ignorance of an assessee as to his rights.”*

4. Heard and perused the records.

5. It was submitted on behalf of the Assessee that in ITA No. 4657/Del/2018 for Assessment Year 2012-13 in case of Dhanesh Kumar Jain who is a co-sharer of the agricultural land against which interest was received. The coordinate bench has allowed the appeal of co-sharer with the following observations:-

“4.....Now, in the case before us, it is a matter of fact borne from the record, that, the assessee had in his return of income for the year under consideration duly disclosed the interest income that was received by him on the compensation qua acquisition of his agricultural land by the Land Collector, Rohtak. As the assessee had in his return of income duly reflected the interest that was received by him on the compensation qua compulsory acquisition of his agricultural land, therefore, the failure on his part to raise a claim for deduction u/s 57(iv) of the Act, to which he was statutorily entitled, being clearly in the nature of a mistake that was glaring, apparent, patent and obvious from record, therein, rendered the order passed by the A.O amenable for rectification u/s. 154 of the Act. Insofar the observation of the CIT(A) that as the return of income filed by the assessee was subjected to a simpliciter processing u/s 143(1) of the Act and, had not been subjected to scrutiny assessment, therefore, the same could not have been rectified for allowing the assessee’s claim for deduction u/s 57(iv) of the Act is concerned, we are afraid that the same does not merit acceptance. At this stage, we may herein observe, that as per the clear mandate of law, an intimation or a deemed intimation under sub-section (1) of Section 143 falls within the realm of clause (b) to sub-section (1) of Section 154 of the Act, therefore, a mistake emanating therefrom, as long as the same is apparent from record, is beyond any doubt rectifiable under the said statutory provision. As regards the view taken by the CIT(A) that the remedy for claim of the aforesaid deduction can be traced in Sec. 119(2)(b) of the Act, the same too does not find favour with us. In our considered view, where a remedy available to an assessee falls within the four corners of a specific statutory provision, then, the same cannot be declined to him, for the reason, that an alternative remedy is available elsewhere. Be that as it may, we are of a strong conviction that as the A.O remains under a statutory obligation to deduce the ‘true income’ of an assessee, therefore, the entitlement of the assessee before us towards deduction u/s 57(iv), which is inextricably interwoven or in fact intertwined with the corresponding interest income which had duly been disclosed by him in his return of income, could not have been declined by the A.O on the basis of hyper technical reasons. Our aforesaid view is fortified by the Judgment of the Hon’ble Supreme Court in the case of Anchor Pressings (P) Ltd. Vs. CIT (1986) 161 ITR 159 (SC), wherein the Hon’ble Apex Court, had observed, that where an assessee who was entitled to claim a

deduction had omitted to raise such claim in his return of income or in the course of the assessment proceedings, then, he was entitled to make such claim by moving an application u/s. 154 of the Act. For the sake of clarity the observations of the Hon'ble Apex Court are reproduced as under :-

“An obligation is imposed on the income-tax officer by section 84 of the Income Tax Act, 1961, to grant relief there under and the relief cannot be refused merely because the assessee has omitted to claim the relief, but the mere existence of such an obligation on the income-tax officer is not sufficient. Precise factual material and clear data must be contained in the record sufficient to enable the Income-tax Officer to consider whether the relief should be granted under section 84. In the absence of such material, ITA No.7010/2010 nofault can be found with the Income-tax offer for not making an order under section 84 favouring the assessee”

As in the case of the assessee before us, the complete details that were required to allow his claim for deduction u/s 57(iv) of the Act i.e disclosure of interest on compensation was clearly discernible from his return of income and, no new facts were required to be looked into, therefore, in our considered view, there was no justifiable reason for the A.O to have rejected the assessee's application u/s 154 of the Act.”

- 6.** The Id DR could not distinguish the aforesaid facts and circumstances or cited any other proposition of law.
- 7.** In the light of the aforesaid circumstances, the grounds raised are allowed and the impugned order is set aside with the direction to the Id A.O to allow the assessee's claim for deduction u/s. 57(iv) of the Act of Rs.23,20,949/- i.e. @ 50% of the interest on compensation of Rs.46,41,898/- that was disclosed by him in his return of income for the year under consideration. The Grounds of appeal Nos. 1 to 5 are allowed in terms of our aforesaid observations.
- 8.** Consequently, the appeal of the Assessee is allowed in terms of aforesaid directions.

Order pronounced in the open court on 31/05/2022.

-Sd/-
(G.S. PANNU)
HON'BLE PRESIDENT

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 31/05/2022
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi