IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

**ITA No. 4385/Mum/2015 (A.Y. 2011-12)**
**ITA No. 7269/Mum/2017 (A.Y. 2011-12)**

Anil Bhagwan Advani,
6/64 Shyam Niwas, Warden Road,
Mumbai-400026
**PAN: ADPPA6266J** ..... Appellant

Vs.

ITO-(IT)-1(1)(1),
Room No. 114, First Floor,
Scindia House, Ballard Estate,
Mumbai-400038. ..... Respondent

**ITA No. 4772/Mum/2015 (A.Y. 2011-12)**

ITO-(IT)-1(1)(1),
Room No. 114, First Floor,
Scindia House, Ballard Estate,
Mumbai-400038. ..... Appellant

Vs.

Anil Bhagwan Advani,
6/64 Shyam Niwas, Warden Road,
Mumbai-400026
**PAN: ADPPA6266J** ..... Respondent

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| Appellant/Assessee by | : Sh. Tapas Misra |
| Respondent/Revenue by | : Smt. Shailja Rai, CIT-DR |
| Date of hearing | : 31/05/2022 |
| Date of pronouncement | : 28/07/2022 |

**ORDER**

**PER GAGAN GOYAL, A.M:**

These three appeals by the assessee and Revenue are directed against the order of Commissioner of Income Tax (Appeals)-55, Mumbai [hereinafter referred to as 'the CIT (A)'] vide orders dated 30.03.2015 & 04.10.2017 for the Assessment Years (AY) 2011-12. In ITA No. 4385/Mum/2015, ITA No. 4772/Mum/2015 & 7269/Mum/2017 for AY 2011-12 respectively. In ITA No. 4385/Mum/2015, the assessee has raised the following grounds of appeal:

The under-mentioned grounds are without prejudice to one another.

1. The Commissioner of Income-tax (Appeals), erred in rejecting the appellant's claim that the payment to Mr. Kishore Mansukhani on the successful transfer of property was in fact "diversion of income by overriding title" and the sale proceeds should accordingly be reduced.
2. Without prejudice to Ground 1 above, the CIT (A) erred in restricting the deduction u/s 48(I) of the Income Tax Act, 1961 to legal expenses incurred by Mr. Kishore Mansukhani, ignoring the fact that the entire payment to Mr. Kishore represents expenditure incurred wholly and exclusively in connection with the transfer of the said property and so, fully deductible.

2. In ITA No. 7269/Mum/2017, the assessee has raised the following grounds of appeal:

"The under-mentioned grounds are without prejudice to one another.

**1. GROUND 1:**

The Commissioner of Income-tax (Appeals), erred in completing the rectification proceedings based on subjective and misconceived interpretation of facts.

**2**. **GROUND 2:- Validity of Rectification under Section 154 of the Act**

**a)** The AO erred in initiating rectification proceedings under Section 154 of the Act on the alleged ground that there were mistakes apparent from the Order Giving Effect (OGE) to the Order of the Commissioner of Income-tax (Appeals)-55.

**b)** Without prejudice to the above, the interpretation of the CIT (A) order is a debatable issue and cannot be the subject matter of invoking rectification under Section 154 the Act.

**3. GROUND 3:- Validity of reference made under Section 55A of the Act**

**a)** The CIT (A) has erred in confirming the reference made by AO under Section 55A of the Act which is bad in law being without authority.

**b)** Without prejudice to the above, the CIT (A) has erred in confirming a reference made by AO under Section 55A of the Act post OGE when a reference under Section 55A of the Act can be made only for the purpose of Computation of Total Income.

**c)** Without prejudice to the above, the CIT (A) has erred in confirming a reference made by AO under Section 55A of the Act contrary to the directions given by the CIT (A).”

3. In ITA No. 4772/Mum/2015, the Revenue has raised the following grounds of appeal:

1. “Whether in the facts and circumstances of the case and in law the Ld.CIT (A) has erred in holding that total amount of award together with Interest contemplated under the provisions of Land Acquisition Act, 1894, received by the assessee and subject matter of consideration in the assessment Order be treated for taxation under the head of 'Capital Gain’?
2. "Whether in the facts and circumstances of the case and in law and when the Hon'ble High Court only confirmed the original Award together with Interest contemplated under the provisions of Land Acquisition Act, 1894, the Ld. CIT(A) has erred in holding that Interest under Land Acquisition Act, 1894,on Award received by the assessee be treated as 'enhanced compensation' u/s 45(5)(b) of the Act and be taxed under the head 'Capital Gain' instead of treating the same as income under the head 'Income from other sources' under the Income Tax Act?"
3. "Whether in the facts and circumstances of the case and in law the Ld. CITA) erred in not accepting the working of the AO for determination of cost of acquisition of the property as on 01.04.1981 which is prescribed in the book titled "Indian Valuer's Directory and Reference Book" and which is followed by the Collector of Stamps, Mumbai for determination of market value of property in the year 1981?"
4. "Without prejudice to Gr. No. (3) above, whether in the facts and circumstances of the case and in law the Ld. CIT (A) erred in de facto setting aside the issue to the AO in contravention of section 251(1) (a) of the Act by directing the AO to refer the matter for valuation u/s 55A of the Act without categorically deciding the correctness of either assessee's valuation or valuation worked out by the AO?"

4. In addition to above, the Revenue has raised following additional grounds also.

1. “Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified on directing the AO to allow the legal expenses, if any, directly

incurred by the assessee u/s 48(1) of the Act, while working out the Capital Gain as directed?"

2. "The appellant prays that the order of the CIT (A) on the above grounds be set aside and that of the Assessing Officer be restored."

5. Brief facts of the case are that the assessee has filed return of income on 28.09.2011 declaring total income at Rs. 3,68,09,850/-. The case was selected for scrutiny and accordingly the statutory notices under section 143(2) & 142(1) of the Income Tax Act, 1961 (for short 'the Act') were issued and duly served on the assessee.

6. The appellant is an Individual filed his return of income for the year under consideration on 28-09-2011, declaring total income of Rs. 3,68,09,850/-. The case was selected for scrutiny and relevant notices u/s 143 (2) and 142(1) were issued and duly served on the assessee. A.O. assessed the total income of the assessee at Rs. 7, 35, 77,139/-. The assessee is non-resident having the sources of income in India. During the relevant Financial Years (FY) he has shown Income from Business and Capital Gains on sale of property.

7. During the year under consideration the appellant received the compensation under compulsory acquisition of his plot at Worli. The said compensation consist of interest component on the originally awarded amount the appellant has 1/3$^{rd}$ share of the property and the consideration awarded along with interest component was offered as sales consideration and was declared under the head business income. A.O. issued show cause notice to the appellant asking his to explain why the amount of interest received should not be treated as income from other sources and compensation received shouldn't be treated under the head capital gains. The A.O. also questioned the estimation of land at Rs 2,00,000/- per square meter as on 01-04-2000 and the basis of adopting the FMV as on 01-04-1981 at Rs 10,000/- per square meter and why the

same shouldn't be treated at Rs 1000 per square meter. A.O. called for other details also w.r.t the eligible investment claimed as deduction u/s 54F and the professional fee claimed of Rs 4,80,12,787/-

8. After obtaining the explanations and submissions of the assessee, A.O. analyzed the details furnished w.r.t assessee's contention of income to be assessed under the head business income considering the plot as stock in trade is reversed by the A.O. stating that no business income was accrued to the assessee in the said transaction. A.O. considered the interest income of Rs 14, 71, 54,166/ under the head income from other sources. The compensation received is treated as capital gains and recomputed such long term capital gains on sale of plot at Worli taking the FMV as on 01-04-1981 as per the valuation report only for the land part, stating that there is no permanent structure and the ministry of defence also doesn't specify any structure on the land and on such land pert allowed the indexation. While doing so, A.O. disallows the deduction claimed u/s 54F also.

9. Now we will deal the appeal under consideration with reference to various grounds of appeal taken by the appellant against the order of Ld. CIT (Appeal)-55, Mumbai.

10. Appellant raised 2 grounds of appeal originally at the time of filing of appeal.

11. Ground no. 1 and 2 are interlinked hence adjudicated by common finding.

12. Relevant facts to decide ground no.1 and 2 are as under:

i) A notification u/s (4) of the land acquisition act (LAA) was issued on 04-02-1995 and the award of the special land acquisition officer (SLAO) was issued on 30-05-1995. This land was in possession of ministry of defence (Government of India) since before independence

ii) No further steps were taken by the Government authorities towards acquisition formalities. Thereafter on 21-01-1999 the notification for suo-moto withdrawal was issued resulting in acquisition initiated by the govt. was rendered null and void ab-initio.

iii) Thus, the appellant along with her co-owners, had encumbered rights in the said property and were legally entitled to deal with the land in any manner deemed fit. Accordingly to commercially exploit the land by developing the same and constructing residential flats thereon, the appellant and the co-owners, identified Mr Kishore Mansukhani who had experience in land development and construction to partner in the business of land development. With a view to maximize profit and in the view of the fact that neither the appellant, his mother or sister could undertake the development of land themselves, the appellant and the co-owner entered into the joint venture agreement on 23 May 2000 with Mr. Kishore Manusukhani to maximize the gains on the commercial exploitation of the land.

iv) Under the circumstances, the capital asset being land, was converted into Stock-in – Trade. Mr. Kishore Manusukhani was mandated to commence the development process after obtaining possession of the land from the Ministry of Defence

v) Mr. Kishore Manusukhani thereafter started making all efforts to obtain vacant possession of the land, but was not able to do so up to 31 March 2001. At this stage, it became evident to all the parties concerned that the Ministry of Defence did not intend to relinquish possession of the land. The terms of the Joint Venture Agreement dated 23 May 2000, could therefore not be implemented as per its agreed intent and accordingly , the appellant along with the co-owners and Mr. Kishore Manusukhani jointly decided to maximize return on the said land by negotiating the best possible compensation from the Ministry –of –Defence.

vi) The fresh arrangement was documented in an agreement dated 2nd April 2001 between the appellant and the co-owners on one hand and Mr. Kishore Manusukhani on the other. Under the arrangement, Mr. Kishore Manusukhani was required to take all necessary steps for sale of property to the Defence Department of the Government of India, at the maximum compensation.

vii) The A.O. erred in ignoring the fact that the charge of Mr. Kishore Manusukhani existed on the source of income itself much before the date on which the award was granted. Consequently, the appellant was never entitled to 20% of the compensation which became the property of Mr. Kishore Manusukhani at the source itself and therefore constituted a diversion of income by overriding title.

viii) The payments made to Mr. Kishore Manusukhani in relation to the commercial exploitation of the said land and the legal expenses incurred for and on behalf of the appellant and her co-owners in pursuing the legal recourse against the Ministry of Defence, Government of India

13. We have gone through the order of the A.O., Ld. CIT (Appeal), submissions of the assessee before the lower authorities and paper book submitted along with appeal.

14. As indicated in the chronology of the event given on pg 13 of the paper book the land I question was acquired in 1942 by Late Mr. Bhagwan Advani who passed away in 1986 and the assessee along wither co-owners inherited the same assessee is entitled to 1/3rd share of the land. The land remained under tenancy of the Indian navy from the time of purchase till 1995 the land in question was notified for acquisition for a total compensation of Rs 27,87,29,369/.

15. Subsequently vide letter dated 30-11-1998 and 21-01-1999 (vide pg no. 40-42 of the P.B) the land was withdrawn from acquisition process. After the land was withdrawn from acquisition the assessee decided to convert the asset into stock-in-trade, intending to seek eviction of the Indian navy as tenants and then construct a building for sale purpose. For this purpose assessee entered into a joint venture agreement with Mr. Kishore Manusukhani on 23rd May 2000(vide pg no 43-49 of P.B) subsequently both, assessee and Mr. Kishore Manusukhani realized the difficulty in securing eviction than assessee decided to make an attempt to revive the acquisition of land and secure appropriate compensation. In consequent to this joint venture agreement was annulled and a fresh agreement was executed with Mr. Kishore Manusukhani on 2nd April 2001 (vide pg no 50-53 of P.B)

16. After prolonged legal process the assessee obtained a favourable decision in his favour with the help of Mr. Kishore Manusukhani from the honourable Bombay High Court in July 2009. This decision of honourable Bombay High Court was challenged by the Government through SLP in honourable Supreme Court. This SLP of the Govt. was dismissed by the honourable Supreme Court in Oct 2009 (vide pg no 54-76 of the PB). subsequently Government of India addressed a letter to the chief of navy staff conveyed the sanctions of the President of India

for the acquisition of the subject land for a total consideration of Rs 72,01,91,805/-

17. From the above discussion of the facts and various submissions by the assessee at various stages it is apparently clear that right from the beginning of the agreement with Mr. Kishore Manusukhani that all the expenses involved in the process of obtaining vacant possession by evicting the Indian Navy would be borne by Mr. Kishore Manusukhani (pg 45, clause-3 and pg 46, clause-9 of the PB). Considering the uncertainty of the time ,outcome and the cost involved the assessee had agreed in the original joint venture agreement of May 2000 to pay Mr. Kishore Manusukhani 20% of the profit of the development venture or as the case may be 20% of the sales considerations if the property was to be disposed without any development.

18. With reference to the facts mentioned supra a fresh agreement was executed in April 2001 to pursue the recourse action of enforcing acquisition of the land for appropriate compensation , the understanding of the parties as regards risk and rewards continued and it was agreed that 20% of the compensation would be paid to Mr. Kishore Manusukhani and the remaining compensation after making payment to Mr. Kishore Manusukhani would be shared among the co-owners equally(vide pg 52,clause 3 and 4 of the PB)

19. Mr. Mansukhani has taken all necessary legal action such as selection of appropriate lawyers, preparation of documents/ petitions, etc. to fight a protracted legal battle to secure eviction and possession of the land, or in the alternative, to secure acquisition of the land. Entire expenditure incurred in the process of litigation before the Mumbai high Court and the Supreme Court was paid by Mr. Mansukhani and no part was paid by the assessees.

20. There is no doubt that Mr. Mansukhani had the necessary expertise having been involved in the legal proceedings of the adjacent plot number 53A of Ms. Meher Rusi Dalal. Pursuant to directions from the Bench on 22nd July 2021, the assessee had submitted, vide application of for admission of additional evidence dated 05.10.2021, a compilation of correspondence between Kishore Mansukhani and the advocates and assessees. These show the extent of involvement of Mr. Mansukhani, who was in no way related to the assessees and who possessed evident experience in handling such long gestation litigation relating to land, having handled, inter alia, the case of the land right next to the assessees'.

21. Having no idea how long the litigation would continue, what would be the cost in the entire process, whether it would end successfully and if it did, what would be the quantum of compensation; the assessees found it convenient to agree to pay a lump sum determined as a fixed percentage of an uncertain amount of compensation receivable, if at all, at an uncertain point of time in future. The entire risk was that of Mr. Mansukhani while the assessees just had to pay the expenditure once they received payment. This is exactly what was agreed in the case of plot 53A and the Hon'ble Tribunal has held that entire payment to be eligible expenditure under section 48 of the Income-tax Act, 1961.

22. The claim for this expenditure has been restricted by holding that "legal expenses incurred" by Mr. Mansukhani would be allowed as deduction. There is no such restriction in section 48 confining the deduction to legal expenses. Any expenditure is allowable so long as it is incurred in connection with the transfer. Reference is made to the following cases where various kinds of payments have been held allowable under section 48 of the Act.

CIT v/s Abrar Alvi [2001] 247 ITR 312(Bom)
CIT vs. Smt. Shakuntala Kantilal [1991] 190 ITR 56 (Bom)
Kaushalya Devi vs. CIT [2018] 92 taxmann.com 335 (Del)

23. Mr. Mansukhani has offered a sum of Rs. 9.28 crores to tax in his income tax return for AY 2011-12, as the balance amount was kept in an Escrow account and released on completion of the milestone. Kindly see page 81 of paper-book in the head "Income from Business/Profession".

24. In the case of the adjacent plot 53A, Mrs. Meher Rusi Dalal [I.T.A. No.4569/Mum/2009] wherein similar payments to Mr. Suresh H Mansukhani, Mr. Kishor A. Mansukhani and Mr. Ashok P. Shah have been allowed for services rendered by them to obtain the compensation as early as possible from the Land Acquisition authorities. In that case, the Mansukhani and Mr. Shah were paid 33.33% of the total consideration for pursuing the matter at their cost whereas in the assessee case the payment to Mr. Kishore Manusukhani was only 20% of at the total cost compensation.

25. The honourable bench had directed the assessee and the department to find out status of similar issues if any, in the case of the adjacent plot of Meher Rusi Dalal. In that case, the only issue in the department's appeal before the Tribunal (no appeal by the assessee) was the allow ability of payment made to Mr. Kishore Manusukhani and others the Hon'ble tribunal held vide order dated 28th September 2011 in ITA No 4569/Mum/2009 that agreement between the assessee and the facilitators was valid and that the payments to them being expenses incurred by the assessee in connection with transfer of capital assets, were deductible in computing capital gains. This decision, submitted vide letter dated 7th February 2022, is a binding precedent in view of similarity of facts and in view of the interim order dated 19th January 2022.

26. In this case of Anil Advani, in the order giving effect to Ld. CIT (A) order dated 14 August 2015, it was directed by ld. Ld. CIT (A) that deduction under section 48(1) of the Act is to be restricted to the extent of actual legal expenses

incurred and not the amount settled by virtue of agreement between the parties mentioned (supra).

27. Further the said sum received from the appellant and her co-owners had been offered to tax by Mr. Kishore Manusukhani as evident by his return of income provided by the appellant in the Paper -Book.

**28. It is evident from the chronology of the events discussed (supra) and relying on the findings of the ITA No 4569/MUM/2009 in the matter Mrs. Meher Rusi Dalal (read with following pronouncements of various High Courts and Apex Court), wherein coordinating bench of tribunal have allowed 33.33% of the total consideration to obtain a compensation as early as possible from the land acquisition authorities .Here also assessee availed the same services in the similar circumstances. A.O. and LD CIT (Appeal) himself observed that the matter was in litigation in court and compensation could be enhanced, if at all, only in a legal manner. It is not the case that there was no legal battle and just to avoid tax liability assessee as a matter of diversion of income opted for any colourable device by including Mr. Kishore Manusukhani the whole scenario of the matter clearly indicates that the assessee was suffering with the illegal occupancy of her land and requires a help to come out this adverse situation.**

**"[2001] 117 Taxman 95 (Bombay) Commissioner of Income-tax *v.* Abrar Alvi**

**Section 48 of the Income-tax Act, 1961 - Capital gains - Computation of - Assessee sold certain property in which he was tenant - Tribunal held that what was to be allowed as deduction for working out capital gains was not cost of tenancy but cost of ownership rights - Tribunal remanded matter to Assessing Officer to work out market value of property as on 4-8-1983 and allow as a deduction to work out capital gains - Whether Tribunal's finding was a pure finding of fact and order of remand was justified - Held, yes - Tribunal also allowed deduction of amount paid by assessee to his son who had filed a suit seeking injunction restraining assessee from selling property in question - Tribunal found that there was acrimonious dispute between father and son and amount was paid to remove encumbrance - Whether Tribunal rightly allowed**

**deduction of expenditure incurred by assessee to remove encumbrance to transfer - Held, yes**

**[1991] 58 TAXMAN 106 (BOM) Commissioner of Income-tax *v.* Smt. Shakuntala Kantilal**

*It could not be disputed that unless the assessee had settled the dispute with R Ltd. the sale transaction with the society would not, or could not, have materialized. If this transaction had not materialized there would have perhaps been no question of capital gains. One way of looking at the problem could be to say that the full value of consideration in this case was not the apparent consideration,* i.e., *Rs. 2,58,672 but Rs. 2,24,168 (Rs. 2,58,672* minus *Rs. 35,504). The Legislature while using the expression 'full value of consideration' has contemplated both additions to as well as deductions from the apparent value. What it means is the real and effective consideration.*

*That apart, so far as clause (*i*) of section 48 is concerned, the expression used by the Legislature in its wisdom is wider than the expression 'for the transfer'. The expression used is the 'expenditure incurred wholly and exclusively in connection with such transfer'. The expression 'in connection with such transfer' is certainly wider than the expression 'for the transfer'. Here again any amount the payment of which is absolutely necessary to effect the transfer will be expenditure covered by this clause. Accordingly, the sale consideration is required to be reduced by the amount of compensation.*

**[2018] 92 taxmann.com 335 (Delhi) Kaushalya Devi *v.* Commissioner of Income-tax**

**Section 48 of the Income-tax Act, 1961 - Capital gains - Computation of (Deductions) - Assessment year 1994-95 - During relevant year, assessee declared long-term capital gains from sale of immovable property - Assessee had earlier entered into agreement to sell for sale of said property with 'A' - Under said agreement assessee had received certain amount as advance and part payment from 'A' - Since said sale transaction did not materialize and assessee sold property subsequently to another buyer, she had to pay certain amount as liquidated damages to 'A' in terms of earlier agreement to sell - Assessee claimed deduction of payment of liquidated damages under section 48(i) - Assessing Officer as well as Tribunal rejected assessee's claim on ground that payment was not incurred wholly and exclusively in connection with transfer of property to purchaser - Whether since there was a close nexus and connect between payment of liquidated damages and transfer of property resulting in income by way of capital gains, it had to be treated as expenditure incurred wholly and exclusively in connection with transfer of immovable property and, thus, allowable as a deduction under clause (i) of section 48 of Act - Held, yes [Para 26] [In favour of assessee]**

**[1986] 29 TAXMAN 215 (DELHI) Commissioner of Income-tax *v.*Smt. Shakuntala Rajeshwar**

*As regards the question as to whether a sum of Rs. 1 lakh paid to the tenant was an allowable deduction, it was clear that the said sum was paid to persuade the tenant to vacate the property in order to facilitate its development. If this was so, it was clear that the said sum was an allowable deduction. Therefore, no referable question of law arose from the Tribunal's order on this point also.*

**[2002] 125 Taxman 632 (Madras) Commissioner of Income-tax *v.* Bradford Trading Co. (P.) Ltd.**

**Section 48 of the Income-tax Act, 1961 - Capital gains - Computation of - Assessment year 1974-75 - Assessee-company was engaged in construction of hotel and entered into an agreement with 'A' whereby 'A' was to pay an advance of Rs. 5 lakhs and 2,500 shares were to be transferred to 'A' and after construction of Hotel, it was to be sold to 'A' - Assessee-company, in between, entered into an agreement with another company ITC Ltd. for sale of entire undertaking - Disputes arose between parties and, subsequently, compromise was reached whereby 'A' was required to transfer 2,500 shares held by him to wife of chairman of assessee-company for a consideration of Rs. 2,50,000 and assessee-company had to repay to 'A' a sum of Rs. 2,50,000 advanced by him and a sum of Rs. 2 lakhs in full and final settlement of all claims - ITC Ltd. agreed to reimburse a sum of Rs. 1,50,000 to assessee for payment of Rs. 2 lakhs to be made to 'A' - Assessee-company claimed in its return that sum of Rs. 2 lakhs was an expenditure incurred wholly and exclusively in connection with said sale and it was allowable as a deduction under section 48(i) - ITO rejected assessee's claim on ground that payment of Rs. 2 lakhs had no nexus with sale and held that sum of Rs. 1.50 lakhs received from ITC Ltd. by way of reimbursement should be treated as a part of sale consideration - Whether sum of Rs. 2 lakhs was paid to 'A' over and above his contribution of Rs. 5 lakhs so as to pave way for easy transfer of capital asset in favour of ITC Ltd. and only by such payment assessee was in a position to transfer property and, hence, payment was made wholly and exclusively in connection with transfer of capital asset - Held, yes - Whether sum paid by ITC Ltd. to settle claim of 'A' was part of sale consideration - Held, yes - Whether, however, even if sum of Rs. 1.5 lakhs was taken as a part of sale consideration, amount paid to 'A' would constitute an expenditure incurred wholly and exclusively in connection with transfer - Held, yes"**

29. Without any advance payment or any commitment to Mr. Kishore Manusukhani other than on successful outcome. This material fact can't be ignored by the authorities below and this amount of 4, 80, 12,787/- is clearly not a diversion of income rather it's an expense deductible u/s 48 of the Act. This amount of 4, 80, 12,787/- is in extricable part of the whole transaction hence allowable u/s 48, in the result ground no 1 and 2 of the assessee are allowed and

A.O. is directed to delete the disallowance while computing the income of the assessee.

30. The same matter with similar facts and amount, we have decided in the case of another co-owner Mrs. Leila Advani vide ITA No. 2270/Mum/2016 for AY 2011-12, hence, keeping in view the similarity of the facts and considering the assessee's appeal as covered one by ITA No. 2270/Mum/2016, we accept and allow both the grounds raised by the assessee. We further direct to the authorities below that the payments made to Mr. Kishore Mansukhani is to be treated as "diversion of income by overriding title", hence, allowable as deduction under section 48(1) of the Act.

**31. In the result, appeal of the assessee vide ITA No. 4385/Mum/2015 is allowed.**

**ITA No. 4772/Mum/2015 by Revenue**

32. Ground Nos. 1 & 2 are interrelated, hence, disposed of by a common finding for sake of synchronization.

33. In our understanding the issues raised by the Revenue, if we define in our language, it will be narrated as "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in directing the AO to ascertain the quantum of interest received by the assessee on such compensation up to the date of land acquisition by the Ministry of Defence/Special Land Acquisition Officer pursuant to the Supreme Court order and tax the same under the head 'Capital Gain' in terms of section 45(5)(b) r.w.s. 48 of the IT Act and the balance interest paid to assessee for any delay in payment of the compensation, from the date of acquisition of the property in pursuance to High Court/Supreme Court order, as 'Income from Other Sources'?

34. The relevant facts are the appellant is 1/3rd share holder in the plot of land in question, received total award of Rs. 72,01,91,805/-, it comprises award amount of Rs 27,87,29,307/- and interest amount of Rs. 44,14,62,498/-. Assessee share in total of Rs. 72,01,91,805/- is Rs. 24,00,63,935/-. Out of these Rs. 24, 00, 63,935/- A.O treated Rs. 14, 71, 54,166/- as interest on award amount and chargeable to tax under the head income from other sources. Whereas before the LD CIT(Appeal) assessee argued that nomenclature is of the interest but it is actually a part of compensation only, hence is liable to be taxed under the head capital gains.

35. We have carefully considered the order of the A.O., order of the LD CIT(Appeal) and submissions made by the assessee before the authorities below read with the order of honourable Bombay High Court dated 17-june -2009 and honourable Supreme Court order dated 05-October 2009 dismissing the SLP. In view of above following 4 points emerged for consideration as under:

- The receipt of Rs 24, 00, 63,935/- In the hands of the appellant, the nature of the said receipt i.e. under which head of income this receipt can be taxed.
- Is the gross receipt mentioned supra is taxable under more than one heads of income i.e. under the head Capital gains and /or Income from other Sources.

36. The said property was in possession of Ministry of Defence since 1942 and was acquired by the Government by notification under section 4 of land acquisition Act by the SLAO vide order dated 05-January 1995. Thereafter the defence state officer vide order dated 21-january 1999 withdrew the acquisition and had specifically taken note of Section 48 of land acquisition act in regards to the liability of the government towards the appellant. The appellant challenged the said withdrawal of acquisition before the Hon'ble Bombay High Court through writ petition. It is clearly established from the above facts that the appellant didn't have any right to receive any sum. The appellant received compensation

for the complete extinguishment of her right, title and interest in the said land only pursuant to the said order of the court.

37. On this issue detailed findings of the Ld. CIT (A) in his order are pertinent to mention and discuss here in verbatim as under:

> "It is clearly established from the above facts that the appellant and her co owners did not have any right to receive any sum from the MOD except the lease rental till the date of the Order of Hon'ble Bombay High Court dated 17 June 2009 wherein the Hon'ble Court directed the MOD to compensate the appellant and her co-owners in accordance with the provisions of the Land Acquisition Act, 1894. The said Order was challenged by the MoD before the Supreme Court which dismissed the SLP vide Order dated 05 October 2009. The appellant and her co-owners received compensation for the complete extinguishment of their right, title and interest in the said Land only pursuant to the said Order of the Supreme Court confirming the order of the Bombay High Court. The said compensation was computed in accordance with the provisions of the Land Acquisition Act, 1894 as directed by the High Court. In the facts and circumstances, it is my reasoned view that the source of compensation is directly. and inextricably in lieu of relinquishment/transfer of appellant's ownership right along with the co-owners in the immovable property being plot no 50 & 51 Sir Pochankhanawala Road, Worli, Mumbai 400018. Thus, the income arises in respect of the transfer of the said Capital Asset only. Further since the relinquishment/transfer of the appellant's right in the said land is pursuant to the said Order of Supreme Court, I am of view that income arises only after the said judgment by the Bombay High Court/ Supreme Court."
>
> "Interest component in the compensation is not a recompense for delay in payment or enhancement of compensation. Therefore, the appellant has not been paid as interest on any compensation or "excess" compensation determined for the purposes of acquisition. Under the circumstances, the entire compensation received from the SLAO post the order of the High Court can only be in the nature of compensation for transfer of property and therefore taxable under the head "Income from Capital Gains" The only reason part of the compensation represents Income from Business is on account of conversion of the asset into stock-in-trade on 1 April 2000. It is reiterated that the component of Interest and Solatium only represents a working and rationale applied by: the SLAO to determine the market value of the property as on 2010. )]
>
> Further, I concur with the proposition of the appellant that the Ministry of Defence, Government of India was not liable to pay any interest to the appellant

prior to the High Court/Supreme order as prior to that date, there did not exist any debt, of any nature whatsoever, due to the appellant from the Government. The appellant acquired the right to receive compensation only pursuant to the order of the High Court/Supreme Court. The jurisprudence cited by the appellant's AR supports this contention.

The Hon'ble Bombay High Court ordered that the appellant's and her co-owners be paid compensation in accordance with the provisions of the LAA, it is pertinent here to refer to the relevant provisions of the LAA, namely Section 34 which reads as follows:

"Section 34 of the Land Acquisition Act, 1894:-

"When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of [nine per centum], per annum from the time of so taking possession until it shall have been so paid or deposited:

[Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date or expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry]"

The foregoing establishes the following issues:

a. The appellant acquired right to receive the compensation only after the date of the Bombay High Court/ Supreme Court order;

b. The said compensation was to be computed in accordance with the provisions of the LAA.

c. The transfer/relinquishment of ownership rights of the appellant in favour of the Government of India took place on the Order of Hon'ble Bombay High Court / affirmed by the Supreme Court.

d. The source of the receipt of the compensation is the said land i.e. the capital asset owned by the appellant and her co-owners. Consequently, income arising there from has to be taxed under the head "Capital Gains".

e. The appellant was not entitled to any interest under the provisions of the LAA in view of the fact that the compensation arose only pursuant to the order of the Bombay High Court/Supreme Court as such there can be no question of delay in payment of compensation or enhanced compensation…

Now to address the issue of whether such compensation should be taxed i.e. under the head "Capital Gains" or as "Income from Other Sources", it is pertinent to consider the relevant provision of the Income Tax Act namely Section 45 and Section 56, Section 57 and Section 145A which are extracted below:

***"45. Capital Gains***

Notwithstanding anything contained in sub-section (1), where the capital gain arises from the transfer of a capital asset, being a transfer by way of compulsory acquisition under any law, or a transfer the consideration for which was determined or approved by the Central Government or the Reserve Bank of India, and the compensation or the consideration for such transfer is enhanced or further enhanced by any court, Tribunal or other authority, the capital gain shall be dealt with in the following manner, namely :-

a. The capital gain computed with reference to the compensation awarded in the first instance 10, or the as the case may be the consideration determined or approved in the first instance by the Central Government or the reserve Bank of India shall be chargeable as 11[income under the “Capital Gains" of the previous year in which such compensation or part thereof, or such consideration or part thereof, was first received] and
b. The amount by which the compensation or consideration is enhanced or further enhanced by the court, Tribunal or other authority shall be deemed to be income chargeable under the head "Capital gains" of the previous year in which such amount is received by the assessee;
c. Where in the assessment ------ to be the full value of the consideration]

Explanation. - For the purposes of this sub-section;-

i) in relation to the amount referred to in clause (b), the cost of acquisition and the cost of improvement shall be taken to be nil;
ii) the provisions of this sub-section shall apply also in a case where the transfer took place prior to the 1st day of April, 1988;
iii) Where by reason of the death of the person who made the transfer, or for any other reason, the enhanced compensation or consideration is received by any other person, the amount referred to in clause shall be deemed to be the income, chargeable to tax under the head "Capital gains", of such other person. ][Emphasis supplied]

***56. Income from other sources***

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely:-

(viii) income by way of interest received on compensation or on enhanced compensation referred to in clause (b) of section 145A.]

***57. Deductions***

The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely:-

(iv) in the case of income of the nature referred to in clause (viii) of subsection (2) of section 56, a deduction of a sum equal to fifty per cent of such of income and no deduction shall be allowed under any other clause of this

**Method of accounting in certain cases**.

145A. notwithstanding anything to the contrary contained in section 145,-
(b) Interest received by an assessee on compensation or on enhanced.
Compensation, as the case may be, shall be deemed to be the income of the year in which it is received.]

8.14 From a reading of the aforesaid provisions of the I.T. Act, 1961, I find that the appellant's income, which arises directly as a result of relinquishment/transfer of the appellant's ownership right in favour of the Government of India, can only be taxed under the head 'Capital Gains' being inextricably linked to the transfer of the capital asset. The legislation has unequivocally and in very definite terms dealt with the taxability of receipt arising from transfer of a capital asset, being a transfer by way of compulsory acquisition under any law or a transfer, the consideration for which was determined or approved by the Central Government or RBI including enhancement of the consideration by any court, tribunal authority or other authority, the capital gains shall be dealt in the manner specified under Section 45(5) of the Act. In view of the above mentioned discussion, I consider it proper and appropriate to hold that the sum of Rs. 9, 29, 09,769/- is to be taxed as "Capital gain" u/s 45(5) (a) of the Income Tax Act. The AO should work out the capital gains in the hands of the appellant as per Section 45(5)(a) read with section 48 of the Income Tax Act.

8.15 Further, it is also my reasoned view, that the intent of the legislation with respect to the taxation of compensation enhanced over the value determined for the transfer of the capital asset is squarely covered by the provisions of Section 45(5)(b) read with explanation (iii) of the said section. I find that the appellant's case in respect of enhanced compensation is covered completely as per this explanation (iii) wherein it is stated:
"(iii) where by reason of the death of the person who made the transfer, or for any other reason, the enhanced compensation or consideration is received by any other person, the amount referred to in clause (b) shall be deemed to be the income, chargeable to tax under the head "Capital gains", of such other person.]" [Emphasis supplied]”

In view of the provisions of Section 45(5)(b) explanation (iii) of the Act, I find that the appellant's case falls squarely within the provisions of the said section and I hold that addition to the original compensation of Rs. 9,29,09,769/- is to be taxed under the head "Capital Gain". As such, the purported interest component is to be taxed under this provision of law in the peculiar perspective of the appellant's case as detailed above of this order which resulted in the compensation to the appellant after a protracted legal battle for her right subsequent to Hon'ble Bombay High Court and Hon'ble Supreme Court of India's order. The appellant has in detail.

explained, vide the written submissions, the concept of interest in view of section 28 and section 34 of the Land Acquisition Act, 1894 as against the definition of interest income under the IT Act.

In light of the above discussions, the remaining portion of the compensation aggregating to Rs. 14,71,54,166/- which the appellant received along with the original compensation is to be treated as "Capital Gains" in terms of Section 45(5)(b) of the Income Tax Act read with Section 48 of the Income Tax Act in view of the fact that the appellant did not have any right over the compensation amount determined by the SLAO vide the 1995 acquisition order being subsequently withdrawn on 21st January 1999 of its own volition. It was only post the order of the Hon'ble Supreme Court/Bombay High Court, did the transfer/relinquishment of the right of ownership in the said capital asset take place and in consideration of which the appellant and her co-owners acquire a right to receive compensation. In other words, the origins of the receipt; other than the compensation amount of Rs. 9, 29, 09,769/-, is the relinquishment of right of the appellant in the property. Consequently, I concur with the appellant on this Ground that the part of the compensation termed as "interest" in the High Court Order is nothing but the market value of the property transferred subsequent to the High Court/Supreme Court order. In other words, the said "interest" merely represents the additional compensation payable to the appellant to effect the transfer at the fair market value as on the date of transfer/relinquishment i.e. the date of High Court/Supreme Court, there was no compensation of the said property determined/ ascertained the appellant by right on such sum, except till the order of the Hon'ble Mumbai Bombay High Court/ Hon'ble Supreme Court. Under the circumstances, I direct the AO to ascertain the quantum of interest received by the appellant on such compensation up to the date of land acquisition by the MoD/SLAO pursuant to the Supreme Court order and tax the same under the head "Capital Gain" in terms of Section 45(5)(b) of the IT Act r.w.s 48 of the IT Act. The balance interest paid to the appellant for any delay in payment of the compensation, from the date of acquisition of the property in pursuance to High Court/Supreme Court order, the same should be taxed under the head "Income from Other Sources". In the result, this ground is adjudicated accordingly. The AO is instructed to take note of the directions and compute the appellant's taxable income accordingly. Ground No. 3 of the appeal is partly allowed."

38. In addition to the findings of the Ld. CIT (A) discussed (supra) following pronouncements of various High Courts are also relevant to mention hereunder:

a) **Delhi Development Authority vs Income Tax officer [1995] 53 TTD 19 (Delhi)** where certain sums was credited to various allottees registered with DDA under

its SFS scheme but no tax was deducted at source by DDA with meaning of section 194A. It was held that interest credit to allottee's account represented an act on DDA's part in compensating him for delay in construction of dwelling unit whereby allottee was prevented from taking physical possession and moving in, and as such, it did not fall under any of the categories in section 2(28A) and merely represented a measure for qualifying compensation for delay in construction.

b) **Ghaziabad Development Authority vs. Dr. NK Gupta in the National Consumer Dispute Redressal Commission of New Delhi** where it was held that the amounts which were paid to the GDA by the Complainant were not paid by way or any deposit or GDA had not borrowed that money. And, as a matter of fact, interest as defined in sub-section (28) of Section 2 of the Income Tax Act is not that interest as was directed to be paid to the Complainant by the GDA. Interest to the Complainant (here Dr. Gupta) has not been awarded on the basis of any deposit made by the Complainant or GDA being the borrower of any money of the Complainant. Here interest payment is by way of damages. Merely describing the damages as by way of interest do not make them as interest under the Income Tax Act."

c) **Cauvery Spg. & Wvg. Mills Ltd. (In Liquidation) vs. Deputy Commissioner of Income tax in the Madras High Court (2011) 11 taxmann.com 193 (Mad.)** where it was held that in view of provisions of section 2(284), to call an amount received as interest, at least one of conditions should be satisfied, namely, same should have been received as a due on account of any money either borrowed or debt incurred. Since, in instant case, amount which was agreed to be paid by way of interest as per order of Company Court, was not on account of any money either borrowed or debt incurred, same could not be treated as interest at all as defined in above provision

The aforesaid submission is affirmed with the fact that the Counsel of Union of India, Defence Department were defending the Government's interest stating that the Defence Department was in continuous possession of the said land as tenants. To this effect, they took note of the provisions of Section 48 of the Land Acquisition Act, 1894 for denial of any payment due to the appellant prior to the adjudication of the Bombay High Court dated 17 June 2009 which resulted in the compensation."

39. As a result of the above the relevant facts can be summarised as under:

(i) The entire sum of Rs. 72, 01, 91,807 was received as a compensation for acquisition of the land, irrespective of the mechanism adopted for determination of that number.

(ii) The amount of interest' as shown in the letter dated 12 February 2010 (enclosed as Annexure) has solely been used as a basis for computation of the total compensation payable in 2010 when the acquisition was finally auctioned. No part of that interest is computed with reference to any provision of the Land Acquisition Act as the event for payment of interest under that Act itself, had not been triggered.

(iii) Interest payable under section 28 of the Land Acquisition Act arises only when the quantum of compensation is questioned in the Court under section 18 and the Court awards higher compensation than what was determined by the Collector.

(iv) Interest payable under section 34 of the Land Acquisition Act arises when the compensation is not paid or deposited on or before taking passion of the land, or when the whole or any part of the compensation is not paid or deposited within one year from the date when possession is Jakes. In this case, the possession was never taken under the Land Acquisition Act, and the government withdrew from the acquisition. The possession with the government was in the capacity of a tenant and it continued to remain so till the High Court decided in favour of the assessee.

(v) On 28.4.2010, when possession was taken pursuant to the President's approval for acquisition conveyed vide letter dated 12th February 2010, the entire amount was paid and the whole amount thus represented the consideration received for transfer of capital asset.

(vi) The assessee have made a separate claim for interest under section 34 of the Land Acquisition Act on the amount of solatium and that issue was sent by the High Court, vide order dated 01.12.2010, for determination. This interest, when quantified and awarded, would be in the nature of interest as contemplated under section 34, whereas the interest referred to in the letter of acquisition was merely used as a yardstick for computing the compensation. In fact, in the High Court order on 1.12.2019, the sum of Rs. 64,81,72,626 (excluding the amount of solatium and additional component) has been referred to as 'the compensation. It may kindly be noted that pursuant to the second order of the Hon'ble High Court, the interest under section was quantified and a sum of Rs. 12.77 crores was paid to the assessee in 2019, and the same was treated as interest under section 56(2)(viii) and offered to tax, after claiming deduction under section 57(iv), in AY 2020-21

(vii) The amount of interest shown in the computation of compensation is not interest' payable under section 28 or 34 of the Land Acquisition Act. There is no mention to any of these sections in the letter issued by the Ministry of Defence.

> Thus, as stated above, the amounts shown as "interest' in the said letter is not interest of the nature contemplated under section 145A (b) or section 56(2) (viii) of the Income-tax Act. Kind attention is also invited to the submissions already made at page 4-7 of the paper-book."

40. Based on above, it can be reasonably concluded that the interest paid to the assessee for any delay in payment of the compensation from the date of acquisition of the property in pursuance to Hon'ble Supreme Court order, the same should be taxed under the head "Income from other sources" and compensation with interest received by the assessee up to the date of land acquisition pursuant to the Hon'ble Supreme Court order should be taxed under the head "Capital Gains". We confirm the view of Ld. CIT (A) and resultantly dismiss the ground of appeal taken by revenue on this issue. In the result, grounds nos. 1 & 2 raised by Revenue are dismissed.

41. Ground Nos. 3, in the assessment order AO vide para-7.3 and 7.4 of the assessment order wherein he assigned his reasons for denying the claim of the appellant. The relevant portion of the assessment order is extracted herein below:

> *"The valuation report as submitted by the assessee does not provide any explanation, reasons or the survey of values of the properties during the year 1981 and in itself gives the assumptions and limiting conditions of the valuation of the property. It simply gives the opinion of a person without any supporting reasons or examples or documents.*
>
> *In contrast to the valuation report submitted by the appellant, the book titled "Indian Valuers Directory & Reference Book" incorporating Market Value of property in Mumbai, is more comprehensive, explaining the reasons for arriving at the values mentioned in the reckoner."*

42. For sake of clarity, the appropriate findings of Ld. CIT (A) vide page 45 para 11.4 is reproduced herein below:

> *"It is essential that the cost of acquisition for determining the capital gains has to be ascertained in terms of Section 48 of the Income Tax Act. I find that the*

*appellant has given the valuation report dated 20/05/2010 from the registered Government valuer, M/s AV Shetty and Associates for working out the cost of the said property as on 01/04/1981 to the AO. Having taken note to the AO's order as well as appellant's AR's submission consider it proper and appropriate to direct the AO the he should determine the cost of acquisition of the capital asset as on 01/04/1981 for working out the capital gain in the hands of the appellant based on details and information available on record. As far as the appellant's dispute regarding the cost of valuation of the property concerned, I consider it proper and appropriate to direct the AO to take note of valuation report given by the aforesaid registered government valuer for determination of cost of acquisition as on 01/04/1981 to determine the capital gains. However, I would also like to make here the observation that if the AO is not in agreement with the said Government registered Valuer's valuation report then he must assign the reasons for such rejection in his order and in such situation he should refer the property for determination of the value as on 01/04/1981 in terms of Section 55A of the Income Tax Act to the government valuation officer. However, the AO cannot merely ignore the report of the registered government valuer given by the appellant without assigning any valid reasons for such decision. Accordingly, the AO should act upon as directed above for determining the Capital Gains in the hands of the appellant as adjudicated in para 4.22 to 4.27 of this order as well as to determine the cost of acquisition as on 01/04/1981."*

43. On this aspect, we have gone through the order of AO, order of Ld. CIT (A) and contentions of the assessee. We have observed that assessee has obtained valuation report from a Government approved registered valuer. The registered valuer while deriving the figures had relied on similar transactions in the similar vicinity. It is further noted that the valuation figure derived by the Government approved valuer was higher than the value being adopted by the Stamp Duty Valuation Authorities. Still, if AO is not satisfied with the Valuation Report submitted by the assessee is empowered under section 55A of the Act to refer the matter to the District Valuation Officer (DVO). AO cannot merely ignored the report of Government approved registered valuer, he is duty bound to assigned the specific reasons with deficiencies in the report submitted by the assessee. Further, he is fully empowered, for fair determination of income to refer the matter to the DVO under section 55A of the Act which he has not done.

44. In view of the above, action of the AO cannot be justified factually and legally. As per Income Tax Act, 1961, the role assigned to the AO, is to verify the contents of the report submitted by the assessee and if he is not satisfied (reasons for dissatisfaction has to be on record), he himself cannot calculate the value of the property with his own figures and logics. This role categorically assigned to the DVO and AO can never enter in the shoe of DVO, hence, this action of AO lacks authority of law and without jurisdiction, hence, this ground of appeal raised by Revenue is **dismissed.**

45. Ground No. 4, in our opinion this ground now became in fructuous in the light of our finding against ground no.3 mentioned (supra). Still we allow this ground of appeal on academic ground. Ground raised by Revenue is upheld as Ld. CIT (A) is not empowered in setting-aside the issue to the file of AO in contravention of section 251(1)(a) of the Act. Duty assigned to the Ld. CIT (A) is to either accept the correctness of either assessee's valuation or valuation worked out by the AO, hence, this ground of appeal is allowed in favour of Revenue for statistical purposes.

46. Additional ground no. 1 & 2 raised by Revenue. This issue is already discussed and decided in assessee's appeal in ITA No. 4385/Mum/2015 vide para-30, hence, no separate adjudication is required on this issue and in the light of findings in ITA No. 4385/Mum/2015, and additional grounds of appeal are dismissed.

47. **In the result, appeal of the Revenue is dismissed.**

**<u>ITA No. 7269/Mum/2017 by assessee</u>**

48. Ground No.1 & 4 are general in nature; hence, no specific adjudication is required.

49. Ground No.2, from the perusal of submissions filed by the appellant, it is seen that the present appeal is with regard to the rectification order passed by the AO under section 154 of the Act. As per the facts of the case, the rectification order has been passed by the AO after giving effect of Ld. CIT (A)'s order. As per the records, the AO has passed the assessment order against which the appellant has filed appeal with the Ld. CIT (A). Following facts emerged after going through the assessment order, Ld. CIT (A) order, order giving effect (OGE) and order under section 154 of the Act as Ld. CIT (A) summed up in his order as under:

> *"1. As per the assessment order the AO had not referred the case to DVO u/s. 55A.*
>
> *2. The Assessing Officer has not accepted the registered Valuer Report as submitted by the assessee and has determined the value on his own accord.*
>
> *3. During the course of Appellate proceedings the CIT(A) examined the facts and accepted the Registered Valuer Report as submitted by the appellant. The Learned CIT(A) gave the following decision vide his order dt. 30.03.2015.*
>
> *"I consider it proper and appropriate to direct the AO to take note of valuation report given by the aforesaid registered government valuer for determination of cost of acquisition as on 01.04.1981 to determine the capital gains. However, I would also like to make here the observation that if the AO is not in agreement with the said Government registered Valuer's valuation report then he must assign the reasons for such rejection in his order and in such situation he should defer the property for determination of the value as on 01.04.1981 in terms of Section 55A of the Income Tax Act to the government valuation officer. However, the AO cannot merely ignore the report of the registered government valuer given by the appellant without assigning any valid reasons for such decision. Accordingly, the AO Should act upon as directed above for determining the Capital Gains in the hands of the appellant as adjudicated in para 4.22 to 4.27 of this order as well as to determine the cost of acquisition as on 01.04.1981."*
>
> *4. (a) From the above decision of CIT(A) it is seen that directions were given to the AO to consider the cost of acquisition of the capital asset as on 1.04.1981 for determining the capital gain.*
>
> *(b) Regarding valuation of the asset the CIT(A) directed the AO to take note of the valuation Report given by the Registered Government Valuer as for determination of the cost of acquisition as on 01.04.1981 to determining the Capital Gains. The Registered Valuer's Report was submitted by the assessee during the course of assessment proceedings.*
>
> *(c) The CIT(A) after giving the above directions to the AO also made observation that if AO is not in agreement with the Registered Valuer's Report, the AD can*

*refer the property for determination of the value as on 01.04.1991 in terms of section 55A of the Income Tax but has to assign the valid reasons for rejection of the government registered Valuer's Report.*

*5. The second direction given by the CIT(A) regarding legal expenses incurred by the appellant was "Therefore, I consider it fit and appropriate to direct the AO to allow the legal expenses, if any, directly incurred in this protracted legal battle by the appellant as adjudicated above. The appellant is also directed to provide all such details of legal expenses before the AO for the above purpose.*

*6. Now pursuant to the order of the CIT(A) the AD vide a letter dated 06.08.2015 asked the appellant to provide details of legal expenses to enable the AO to pass order giving effect to appeal order. The OGE was passed by the A0 on 14.08.2015.*

*7. However, on 28.08.2015 the AO sent a letter u/s. 154 to the assessee stating that the above order giving appeal effect needs rectification on some mistake appear on record".*

*9. The assessee raised objection to the above letter.*

*10.However, on 04.11.2015 the assessee received a letter stating that OGE is sought to be rectified u/s. 154 of the Act on the grounds that mistakes have taken place in allowing the claim of deduction of direct legal expenses and valuation of the property as on 01.04.1981 while calculating long term capital gain.*

*11. Letter was served on 10.03.2016 from valuation offer requesting for details in order to determine value of the property. The assessee objected before the AO.*

*12. The AO vide letter dated 20.04.2016 gave response to objection raised by the assessee.*

*13. After receiving valuator Report on 21.11.2016 rectification order was passed u/s.154 by the AO on 121.01.2017.*

*The appellant is in appeal again the rectification order passed u/s.154 by the AO after order giving effect of the Appeal order. The appellant has raised objections on the validity of rectification order passed by the AO u/s.154.*

*It is seen form the documents submitted by the appellant that the Assessing Officer has given reply to all the objections raised by the appellant.*

*After going through the chronological order of events the question before me is whether the AO was right in passing the rectification order after giving effect to the Appeal order. From the perusal of CIT (A)'s order it is seen that CIT(A) had given a categorical observation in the appeal order that in case AO is not in agreement with the Government Registered Valuer's Report after assigning the reasons for the same in his order he should refer the property for determination of the value as on 01.04.1981 in terms of sec. 55A of the Income Tax Act to the Government Valuation officer.*

*As for as reasons for referring the case to Registered Government Valuer, the assessing officer has answered to all the objections raised by the appellant in detail. The said letter is part of the paper book submitted by the appellant before me.*

*I find that the AO has followed the directions which were in form of observation by the CIT(A) and in which CIT(A) has stated that the matter can be referred to DVO u/s. 55A after recording reasons which the AO has done. As far as this point is concerned, I agree with the action of the AO that he had followed CIT(A)'s direction.*

*Now the second point raised by the appellant is whether after giving appeal effect the AO can do the rectification u/s. 154 of the appeal effect order.*

*I am of the considered opinion that rectification of the OGE (Order giving effect) can be done. Rectification u/s 154 of the IT Act can be done of any order at any time if mistake apparent from record is found. In the present case mistake was found that valuation u/s. 55A had not be referred to DVO as per the observation of CIT(A)'s order.*

*The second ground of appeal is validity of reference made u/s.55A of the Act u/s.154 of the Act. The appellant has relied on the decision of Hon'ble Bombay High Court in the case of Rallis India Ltd Vs Dy. Commissioner of Income Tax and others 284 ITR 159. However, the AO has relied on judgment of Hon'ble High Court of Andhra Pradesh in the case of Bakelite Hylam Ltd. where the Hon'ble High Court has observed as under.*

*"That computation of income and tax can be made by the income-tax Officer not only in regular assessment made under section 143 of the Act but also in order passed from time to time giving effect to the decision of the appellate authority is an much an assessment order as the one passed by him by way of regular assessment under section 143 of the Act but also in order passed from time to time giving effect to the decision of the appellate authorities.*

*After going through case relied by the appellant and the one by the AO, I agree with the AO that the facts of the case submitted by the appellant are different with regard to the reason and stage at which the reference has been made to the valuation offer. In the case of Rallis India no proceedings under the Act was pending before the AO whereas in this case the reference has been made to give effect to the direction of CIT(A) passed u/s. 251 of the Act.*

*Thus I find no infirmity in the action of AO for passing order u/s. 154 of the IT Act, 1961 and making refer to valuation offer u/s. 55A of the Act. The appellant ground No. 2 & 3 of Appeal is rejected."*

50. We have gone through the relevant order of AO passed under section 154 of the Act and order of Ld. CIT (A) as mentioned (supra). The issues involved in rectification proceeding under section 154 of the Act has already been considered by this Tribunal in ITA No. 4385/Mum/2015 vide para-30 & 31 and in ITA No. 4772/Mum/2015 vide para-43, 44 & 45, so the issues involved in this ground of

appeal raised by assessee has already been decided by this Tribunal in favour of assessee, hence, no separate adjudication on merits are required.

51. In terms of para above (para-50) ground raised by the assessee is allowed.

52. Ground No.3, this issue has already been discussed in ground no.2 above, hence, no specific findings are required. Still for sake of disposal we allowed the ground no.3 and declare that findings of Ld. CIT (A) in confirming the reference made by AO under section 55A of the Act was bad-in-law and without authority, hence, this ground of appeal raised by assessee is allowed.

53. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 28th of July, 2022.

| Sd/- | Sd/- |
|---|---|
| (AMIT SHUKLA) | (GAGAN GOYAL) |
| JUDICIAL MEMBER | ACCOUNTANT MEMBER |

Mumbai, दिनांक/Dated: 28/07/2022
*SK,* Sr.PS
**Copy 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., मुबंई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
**ITAT, Mumbai**