

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 7/CHNY/2022

निर्धारण वर्ष /Assessment Year: 2016-17

**M/s. Sayeeranga Specific
Family Trust,**
A1, No.28, Ashok Flats,
10th Avenue, Ashok Nagar,
Chennai – 600 083.

The Income Tax Officer,
vs. Non-Corporate Ward 19(3),
Chennai.

PAN: AANTS 0007L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri N. Arjunraj, CA

For Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 30.08.2022

घोषणा की तारीख/Date of Pronouncement

: 30.08.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Appeal No.NFAC/2015-16/10016972 dated 29.11.2021. The assessment was framed by the ITO, Non-Corporate Ward 14(1), Chennai for the assessment year 2016-17

u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 27.12.2018. The Rectification order (order under dispute) for the assessment year 2016-17 was framed by the ITO, Non-Corporate Ward 19(3), Chennai u/s.154 r.w.s. 143(3) of the Act, dated 24.03.2021.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A), NFAC confirming the action of the AO in rejecting the rectification sought for u/s.154 of the Act, for non-consideration of the trustees income including tax payment for the lease rental income which established double taxation in view of the inclusion of such income in the hands of the assessee and thereby mistake apparent from record.

3. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the assessee trust filed its return of income for the assessment year 2016-17 on 18.03.2017 and subsequently assessee's case was selected for complete scrutiny by issuing notice u/s.143(2) of the Act. Consequently the AO framed assessment u/s.143(3) of the Act after issuing show cause notice and notice u/s.142(1) of the Act. The

assessee representative filed copy of trust deed, statement of total income, balance sheet, written submissions, reasons for claiming large deduction and turnover mismatch, return copy of the beneficiaries along with copy of ITR-V and bank account statement etc. The AO noticed that during previous year 2015-16 relevant to assessment year 2016-17, the assessee's trust is in receipt of rental income of Rs.60 lakhs. The AO also noticed that out of this Rs.60 lakhs rental income, the assessee transferred 50% as corpus fund and remaining 50% was equally divided among 10 beneficiaries namely

1. V. Sayeebrinda	6. A.S. Sampath Big HUF
2. A.S. Rangarjan HUF	7. A.S. Sampath Small HUF
3. A.S. Rangarjan Big HUF	8. A.S. Shantha
4. A.S. Rangarajan Small HUF	9. S. Veeraghavan Small HUF
5. A.S. Sampath	10. Kalyani Veeraraghavan

The AO noted that each of the beneficiary got an amount of Rs.3,05,088/- and few of the HUF noted above did not hold any PAN and have not filed their return of income. Therefore, he noted that since 6 out of 10 beneficiaries are non-existent, the trust has to be treated as indeterminate trust in which case, the whole income has to be taxed in the names of the trust as AOP at maximum marginal rate as per section 164 of the Act. The AO disallowed the claim of

deduction u/s.57 of the Act and added this amount of Rs.60 lakhs as income from other source and taxed the trust income under maximum marginal rate in the status of AOP. The assessee did not file any appeal against this order passed by AO dated 27.12.2018 but subsequently, moved a petition u/s.154 of the Act before the AO vide dated 16.07.2019 received by the AO on 25.07.2019. Before the AO in the petition u/s.154 of the Act, the assessee contended that tax has been paid fully by Shri A.S. Rangarajan amounting to Rs.17,41,347/- for the entire rental income received by the Trust and hence, the income assessed u/s.143(3) in regular assessment by making addition of Rs.60 lakhs be deleted. It is to be noted that this was entirely a new plea taken and nothing on record was available before the AO during the course of assessment proceedings. Hence, the AO passed rectification order by observing as under:-

“The assessment in the case of M/s. Sayareenga Specific Trust for A.Y.2016-17 was completed u/s.143(3) of the I.T. Act., taxing the income in normal rates instead of maximal marginal rates. Since it is a mistake apparent from record, the same is rectified accordingly. Further to the claim of the assessee regarding deletion of lease rent of Rs.60,00,000/- it is seen that assessee filed the return of income showing lease rent received at Rs.60,00,000/-. In the Assessment order, the Assessing Officer accepted the stand of the assessee and went ahead to modify the income returned on the basis of such rent received. In the present petition dated 15.03.2021, the assessee has requested to delete the Lease rent income received to the tune of Rs.60,00,000/-. Thus it is seen that there is no mistake apparent from

record in the order dated 27.12.2018, passed by Assessing Officer since the AO only followed the claim of the assessee having received lease rent income of Rs.60 lakhs. Considering the above, your rectification petition is herein rejected.”

Aggrieved, assessee filed appeal before CIT(A) against this rectification order. The CIT(A) also dismissed the appeal by observing in para 5.1 as under:-

5.1 I have carefully considered the facts and circumstances of the case and the submission of the appellant. The substantive grounds of appeal raised by the appellant do not emanate from the rectification order passed by the AO u/s 154 of the Act on 24/03/2021 which has been challenged in this appeal. I find that the appellant vide this appeal attempts to challenge the assessment order which is not permissible in law. On careful perusal of order u/s 154 of the Act, I find that the AO is justified in rejecting the application u/s 154 of the Act filed by the appellant since there was no mistake in the assessment order which was apparent from record. I hold accordingly.”

Aggrieved, now assessee is in appeal before the Tribunal.

4. Before us, the Id.counsel for the assessee Shri Arjun Raj, CA reiterated the same that the rental income received by assessee trust is disclosed in the hands of Shri A.S. Rangarajan and pleaded for deletion of income added in the hands of the assessee trust to the extent of Rs.60 lakhs and taxed at maximum marginal rates in the status of AOP.

5. The Id. Senior DR stated that this is not a subject matter of rectification as there is no mistake apparent from record in the order passed by AO u/s.143(3) of the Act dated 27.12.2018 and this payment of tax in the hands of Shri A.S. Rangarajan was a subsequent event which was never agitated before the AO during original assessment proceedings. Hence, the assessee want to enter through back door by way of petition u/s.154 of the Act claiming this has mistake apparent from record instead of filing of appeal u/s.246A of the Act before the CIT(A) against the original assessment order. It means, the assessee has not challenged the original assessment order and sufficient time has passed so he wants to take this route of rectification which is no permissible under law.

6. We have also gone through the facts and noted that the plea regarding rental income disclosed in the hands of Shri A.S. Rangarajan was never made before the AO and before AO, Shri A.S. Rangarajan has earned Rs.6 lakhs by letting out this property on lease to the assessee trust. The assessee trust took the property from Shri A.S. Rangarajan on lease for Rs.6 lakhs and the same property was sublet to a company and earned rental income of

Rs.60 lakhs as noted above. Since, this issue is highly debatable and facts are not available on record of the AO, this cannot be considered as mistake apparent from record and hence, the AO has rightly rejected the assessee's application u/s.154 of the Act. The CIT(A) rightly confirmed the same. We affirm the orders of the lower authorities and dismiss this appeal of assessee.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 30th August, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 30th August, 2022

RSR

आदेश की प्रतिलिपि अग्रहित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |