आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE MRS.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
MISS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.2360/Ahd/2018
Assessment Year :2011-12

Jitendra Shantilal Patel 2, Ajubhai Park, Opp: Panetar Party Plot Thaltej, Ahmedabad 380 059.	Vs.	ITO, Ward-14(3) Ahmedabad.

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/**(Respondent)

Assessee by :	Shri Kalpesh Shah, AR
Revenue by :	Shri Shramdeep Sinha, Sr.DR

सुनवाई की तारीख/**Date of Hearing : 15/07/2022**
घोषणा की तारीख /**Date of Pronouncement: 07/10/2022**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the assessee against order passed by the ld. Commissioner of Income-Tax(Appeals)-4, Ahmedabad [hereinafter referred to as "Ld.CIT(A) under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) dated 17.10.2018 pertaining to the Asst.Year 2011-12.

2. The ground raised by the assessee in his appeal as under:

"1.

Order Bad in Law:

The learned Commissioner of Income tax Appeals - 4 grossly erred to uphold order of Assessing officer disrespecting order of Hon'ble Gujarat High Court.
2.

Order passed overlooking Judicial Discipline and Precedents:

The learned Commissioner of Income tax Appeals - 4, grossly erred in passing order overlooking decision of Hon'ble Gujarat High Court on similar facts and further erred in refusing to rectify the error under section 154 of the Income tax Act.

All the above grounds of appeal are independent from one other and without prejudice to one other. We further crave to add new grounds of appeal during the course of hearing before your Honor."

3. As is evident from the ground raised, the challenge before us is against the order passed by the ld.CIT(A) dismissing the rectification application filed by the assessee u/s 154 of the Act. Without going into facts of the case itself, the ld.counsel for the assessee stated that the order passed by the ld.CIT(A) dismissing the assesseee's rectification application itself shows that he had admitted to the mistake in the order of the ld.CIT(A) but had refused to rectify the same for the reason that it would change the decision. He drew our attention to the very brief and cryptic order passed by the ld.CIT(A) u/s 154 of the Act dismissing assesses application for rectification of the order of the Ld.CIT(A) passed in quantum proceedings holding as under:

"To,

Shri Jitendra S. Patel,
2, Ajubhai Park,
Opp. Panetar Party Plot,
Thaltej,
Ahmedabad - 380059

Sub.: Rectification application dated 25/08/2018 for appellate order dated 11/02/2015 regarding.

Please refer to above application received in tapal on 27/09/2018.

2. The contents of application have been carefully persued. It is my opinion that accepting the contention raised therein, shall change the decision taken by my predecessor. Therefore, the mistake claimed can't be rectified u/s 154 of the IT Act 1961

3. The Rectification application dated 25/08/2018 is hereby rejected,

Sd/-

(Subhash Bains)
Commissioner of Income-tax (Appeals)-4, Ahmedabad"

4. The ld.counsel for the assessee stated that this in itself is sufficient for the order of the ld.CIT(A) to be set aside and rectification application filed by the assessee to be allowed.

5. Thereafter, he took us through the facts of the case, pointing out that the assessee had sold land which was ancestral land acquired by him. For the purpose of computing capital gains, cost of acquisition of the land as on 1.4.1981 was to be arrived at. The assessee got it valued through a registered valuer who valued it at Rs22,66,500/-. The AO however rejected this valuation for reasons stated in the assessment order, and he referred the valuation to the Department's valuer under section 55A of the Act. Thereafter adopting the valuation given by the DVO of Rs2,56,870/-, he made addition to the capital gain returned by the assessee of the difference in the valuation of cost of land as furnished by the assessee and as taken by the AO based on DVO's report. Our attention was drawn to para 5.1 to 5.2 of the ld.CIT(A)'s order passed in quantum proceedings bringing out the above case as under:

> *"5.1 If was gathered by the AO that appellant has sold agricultural land situated at village Dascroi, district Ahmedabad for Rs. 80 lakhs along with three co-owners. However, no capital gain was shown by the appellant from the aforesaid transaction in the return filed on 23.12.2011. On confrontation by the AO, it was informed that an ancestral property was purchased by his grandfather in the year 1940 and 50% of said property was transferred to his father in the year 1964. In the year 1997, said property was again transferred to his four sons and daughters and as legal heir the appellant received the said ancestral property as Karta of his HUF. The share; of the HUF was only 25%. It was claimed that since the property belonged to H UF.ino capital gain was disclosed by the appellant. As against this, it is observed by the AO in para-3.5 of the assessment order that the land in question was received by the appellant by succession and not by total/partial partition of HUF of his father. No return was filed by HUF and there was no PAN in the name of HUF. From this, it was clear that relevant capital gain was not disclosed either in the hands of HUF or appellant. In view of above facts. AO taxed the capital gain in the hands of appellant. This decision of AO has not been challenged by the appellant as clear from the grounds of appeal. The only issue challenged by the appellant is computation of capital gain.*

5.2 . The appellant has, during assessment proceedings, computed capital gain by taking the fair market value of land as on 01.04.1981 at Rs. 22,66,500/- at the rate of Rs. 300/square metre. The valuation was based on the report of the government approved valuer Amit B. Rami. The AO noted that in Annexure-A of the report, there was reference to 3 sale instances as comparables out of which first sale instances was at the rate of Rs.299 per square metre whereas other two instances were at the rate of Rs. 15.58 and Rs. 12.58 per square metre only. The AO observed that the area in question in the case of first instance was very small, only 83.61 m2 whereas the area of land under the relevant transaction was 7555 m2 and therefore the rate taken by the valuer was not comparable. The AO has also produced a scanned copy of the valuation report in the assessment order. In view of above facts, AO noted that the fair market value of the agricultural land taken by the appellant as on 01.04.1981 was not correct and accordingly he referred the land for valuation. Valuation Officer, after giving, show cause to the appellant, valued the land at Rs.2,56,870/- as on 01-04-1981 by taking the rate at Rs. 53.06 per square metres.

Accordingly, taking appellant's share as 1/4th, AO calculated the long-term capital gain in the hands of appellant at Rs.10,06,995/- which was added as undisclosed capital gain to the income of the appellant.

6. The ld.counsel for the assessee thereafter stated that before the ld.CIT(A) the assessee had challenged the reference made by the AO to the DVO under section 55A of the Act for the purpose of determining cost of acquisition of the land as being not in accordance with law and relied on the decision of jurisdictional High Court in this regard. But the ld.CIT(A) followed decision of Hon'ble Delhi High Court and ruled against the assessee, however, at the same time mentioning that with due respect to the order of the Hon'ble Gujarat High Court he was rejecting the technical and legal contentions raised by the assessee. The ld.counsel for the assessee drew our attention to para 7.1 to 7.3 of the order of the ld.CIT(A) in quantum proceedings as under:

7.1 It is stated that section 55A is not applicable as the amendment was made effective only from 01.07.2012 and section 55A(b) is also not applicable to the case of the appellant as appellant has adopted the value as ascertained by the Approved Valuer. The contentions raised by the appellant cannot be accepted. Once the relevant property is referred to DVO for valuation, AO is duty bound to accept value of the property as per the valuation report. All the above contentions of the appellant are adversely covered by the following order of Hon'ble Delhi High Court in the case of ACC Ltd. v/s District Valuation Officer W.P.(C) No.3795 of 2011, May 21, 2012. The relevant part of the judgement is as below:

"11. A perusal and a plain reading of the section shows the circumstances under which the Assessing Officer may refer the valuation of the property to the DVO. The section can be invoked by the Assessing Officer for ascertaining the fair market value of a capital asset for the purpose of Chapter IV of the Act, which includes the provisions relating to capital gains. Sections 45 to 55 fall under the chapter, under the sub head "E - Capital Gains". Section 55 (2) (b)(i) gives the assessee the option to substitute the fair market value of the property as on 01.04.1981 in the place of the cost of acquisition thereof, if the property had been acquired by the assessee before 01.04.1981. The option given to the petitioner was exercised by the petitioner by filing the letter dated 18.11.2010 before the Assessing Officer under which the original computation of the capital gains was sought to be substituted by a revised computation in which the cost of the property was taken at the fair market value as on 01.04.1981 at Rs. 21,72,95,000/- on the basis of the registered valuer's report. This letter was filed about 1½ months before the date on which the assessment would have become barred by time. The Assessing Officer while examining the computation of the capital gains was of opinion that the figure of Rs. 21,72,95,000/- shown as the fair market value of the property as on 01.04.1981 was on the higher side and accordingly referred the matter to the DVO, Government Valuation Cell, New Delhi on 20.12.2010. In doing so, he was only exercising his power under Section 55A (b)(ii) of the Act under which he may refer the valuation to the DVO if he considers it necessary so to do, having

conducted in the premises of the assessee, in which a registered purchase deed for a property was recovered, the Assessing Officer, suspecting that the market value of the property was more than the disclosed purchase price, made a reference to the DVO under Section 142A. The DVO estimated the market value of the property at an amount which was much higher than the amount shown in the document. The Assessing Officer added the difference between the two figures as undisclosed investment. It was in this background that this Court held that the report of the DVO, per se, is not information and cannot be relied upon without the books of account maintained by the assessee being rejected. While coming to this conclusion, the Court relied on the judgment of the Supreme Court dated 19.10.2009 in Civil Appeal No.6973 2009, in which case the Supreme court had held that without rejecting the books of accounts, the Assessing Officer could not have referred the matter to the DVO for the purpose of making an addition for undisclosed investment. It will be noticed that the judgment of this Court in Smt. Suraj Devi's case was not concerned with the validity of a reference made to the DVO under Section 55A of the Act for the purpose of estimating the fair market value of a property as on 01.04.1981 for computing the capital gains nor was the Court concerned with the validity of a reference made to the DVO under Section 55A, which was pending when the assessment order was passed (proceedings were completed). This judgment does not touch upon the point raised by the petitioner in the present writ petition. 14. In any case we do not think we would be justified in preventing the Assessing Officer from collecting evidence which may be used by him for the purpose of bringing what in his opinion is the proper amount of capital gains on the sale of Okhla land. As to how he proposes to use the evidence against the assessee is a matter of speculation which we refrain from indulging in. The petitioner would be at liberty to strain every nerve in opposing and challenging any action sought to be taken by the Assessing Officer or any other departmental authority under the Act, if and when such an action is taken. We say nothing about the validity of any such action that may be taken under the Act. If the petitioner raises any objections to any such action that is taken under the Act, it would be the duty of the income tax authorities to examine and deal with them in accordance with law. Non-acceptance of the contentions of the petitioner in the present writ petition shall not be put against the petitioner in any proceedings that may be taken against it pursuant to the reference made to the DVO under Section 55A. 15. With the above observations the writ petition is dismissed. All interim orders stand vacated. There shall be no order as to costs"

7.2 The appellant has relied on few judicial pronouncements. Recently, **Honourable ITAT Mumbai, 'F' Bench, in its order dated 21.06.2013 in ITA No. 261/Mum/2011 (A.Y.2007-08),** has discussed all the relevant pronouncements on this issue and has held as below:

"5. We have perused the records and considered the rival contentions carefully. The dispute raised in this appeal is regarding assessment of long term capital gain in respect of sale of plot of land. The dispute is limited to determination of cost of acquisition of the plot. The plot had been acquired prior to 1.4.1981 about which there is no dispute and, therefore, in such a case market value of the plot of the land as on 1.4.1981 will be the cost of acquisition. The assessee had taken the market value as on 1.4.1981 at 7,61,475/- on the basis of report of registered valuer. The AO had, however, has made reference to the DVO regarding the market value as on 1.4.1981 and DVO has determined the market value at 2,72,447. The registered valuer had valued the land at the rate ITA No. 261/Mum/2011 Mr. Vijay P. Kamik Page 8 of 13 of 706 per sq. ft. whereas the DVO has adopted the rate at 310 sq. ft. after considering comparable cases. The Learned AR for assessee has raised the legal dispute that assessee having declared the higher value of cost of acquisition than the value adopted by the AO, no reference could be made to the DVO u/s 55A. The said provision is reproduced below as ready reference Section 55A:- with a view to ascertaining the fair market value of a capital asset, for the purpose of this chapter the AO may refer the valuation of the capital asset to the valuation officer. (a) In a case where the value of the asset as claimed by assessee is in accordance with the estimate made by a registered valuer, if the AO is of the opinion (i) that the value so claimed is less than its fair fair market value. (b) In any other case, if the AO is of the opinion (i)that the fair market value of the asset

regard to the nature of the asset and other relevant circumstances. The contention of the petitioner that the Assessing Officer had no basis to form the opinion is not acceptable. The original computation of the capital gains as per the return filed by the petitioner was Rs. 130.19 crores as seen from para 14.1 of the assessment order. After the revised computation/ modification of the capital gains was filed, the figure of capital gains came down drastically to Rs. 14,07,16,551/- there was thus a reduction of approximately Rs. 116 crores in the computation of the capital gains and this was significantly due to the claim that the fair market value of the land as on 01.04.1981 was Rs. 21,72,95,000/-. It was on this basis that the Assessing Officer took the view that the valuer's report filed by the petitioner showed the figure on higher side and came to the conclusion that the matter should be referred to the DVO for valuation. The Assessing Officer obviously had the registered valuer's report filed by the petitioner before him. It cannot, therefore, be said that he had no basis or material to form the opinion that a reference ought to be made to the DVO. The reference was made before the assessment order was passed and during the pendency of the assessment proceedings. The contention of the petitioner to the contrary is therefore rejected. The main contention based on the judgment of the Calcutta High Court (supra) that once the assessment was completed, the pending reference to the DVO became invalid and of no effect need not be examined in the present proceedings for the simple reason that the petitioner can be said to be effectively prejudiced only when action is taken by the income tax authorities on the basis of the report submitted by the DVO. Even otherwise there is no provision in the Act which deals with the situation as to what would happen to a reference made to the DVO under Section 55A which is pending completion at the time of passing the assessment order. Obviously the assessment order cannot be deferred in view of the limitation prescribed for passing the same. The report of the DVO, as and when received by the Assessing Officer, may be acted upon by the income tax authorities and if they do so, the validity of that action can be questioned by the assessee on grounds which he may be advised to take. That is not of any concern to us in the present proceedings. Section 55A does not in terms create any bar on the DVO proceeding to value the property on the basis of a valid reference made by the Assessing Officer. We need not speculate as to what purpose the report of the DVO would serve if it is received after the completion of the assessment. As already pointed out, if any action is taken by the departmental authorities on the basis of the report of the DVO received after the completion of the assessment, such action will be open to challenge by the petitioner and it is at that point of time that the Court may be called upon to examine the validity of the action taken by the revenue authorities. That stage has not yet arisen in the present case. It is in this behalf pointed out in the counter affidavit that the reference to the DVO does not become invalid on the completion of the assessment proceedings before the receipt of the valuation report and that after the receipt of the valuation report after completion of the assessment proceedings, the report would become part of the record which may enable the income tax authorities to take action as permissible under the Act, such as Section 147, Section 263, appellate power under Section 250 or Section 251 etc. It is not necessary to examine the contention of the petitioner that once the assessment proceedings are completed, the pending proceedings under Section 55A become infructuous or invalid or get automatically terminated. 13. The petitioner placed reliance on the judgment of the Supreme Court in ACIT v. Dhariya Construction Co. (supra) and the judgment of Division Bench of this Court in CIT v. Smt. Suraj Devi (supra). In these cases, it has been held that the reopening of an assessment under Section 147 of the Act on the basis of the report of the DVO is bad in law. A deeper study of the judgment of the Supreme Court discloses that what has been held therein is that "the opinion of the DVO per se is not an information for the purpose of reopening assessment under Section 147 of the Income-tax Act, 1961" and that "the Assessing Officer has to apply his mind to the information, if any, collected and must form a belief thereon". It may be possible to contend that the judgment of the Supreme Court interdict only a mechanical or robot-like reliance on the report of the DVO for the purpose of reopening the assessment under Section 147 and that if the reopening is based on an independent application of the mind of the Assessing Officer to the report obtained from the DVO and an independent formation of a belief on that basis, then the reopening would be valid. We are not to be understood as expressing any opinion on the applicability of the judgment to the action, if any, that may be taken on the basis of the report of the DVO. The judgment of the Supreme Court has been adverted to by the Division Bench of this Court in CIT v. Smt. Suraj Devi (supra). The question before this Court was not with regard to the validity of the reopening of the assessment on the basis of the report of the DVO. There, on the basis of a search

exceeds the value of the asset as claimed by assessee by more than such amount as may be prescribed in this behalf; or (ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary to do so.

6. It has been argued by assessee that in this case assessee had submitted the report of the registered valuer and, therefore the clause (a) of section 55A was applicable. But since, the value declared by assessee was more than the market value ITA No. 261 Mum 2011 Mr. Vijay P. Karnik Page 9 of 13 taken by AO, no reference could be made under this clause. Further since the registered valuer report had been filed, clause (b) of section 55A was not applicable. Reliance has been placed on the judgment of Hon'ble High Court of Gujarat in case of Hia Ben Jayantilal Shah Vs. Income Tax (Supra) and also on the decision of Tribunal in case of Smt. Sarla N. Sakrane Vs. Income Tax Officer (Supra). The reference has also been made to the judgment of Hon'ble High Court of Bombay dated 28.9.2008 in case of CIT Vs. Daulal Mohta HUF in ITA no. 1031 of 2008. In case of CIT Vs. Daulal Mohta HUF (Supra) there were two questions raised before the Hon'ble High Court. The question (A) related to the valuation of the property while question raised in (B) was whether the AO was justified in making the reference to DVO u/s 55A. The Hon'ble High Court in para 3 observed that the questions were to be raised were with regard to quantum of valuation which was only a finding of fact and there was absolutely no question of law involved in the above appeal. The appeal was thus dismissed. The legal issue whether reference could be made u/s 55A was thus not decided by the High Court. Therefore, the said judgment of the High Court cannot be considered as precedent. We also find that the issue whether reference to DVO can be made by AO under clause (b) of section 55A even if the report of the registered valuer has been filed by assessee has been decided by the Hon'ble High Court of Gujarat in case of ACC Ltd. Vs. DVO (Supra), in which it was held that even if the registered ITA No. 261/Mum/2011 Mr. Vijay P. Karnik Page 10 of 13 valuer report has been filed, the AO can make a reference u/s 55A (b) (ii). We also note that there is nothing in the section 55A which debars AO from making reference under clause (b) even when registered valuer report has been filed. In cases where registered valuer report has been filed reference under clause (a) of section 55A can be made if the AO finds the valuation lower than the market value. In any other case, clause (b) is applicable. **Therefore, it is clear that clause (b) applies in situations where either no registered valuer report has been filed or if the registered valuer report has been filed but the valued determined is higher than the market value. Thus in case the AO is of the opinion that the value as per the registered valuer was higher than the market value, he could make reference u/s 55A (b) (ii).** Therefore, following the judgment of Hon'ble High Court of Gujarat in case of ACC Ltd. Vs. DVO (Supra) we hold that the reference made by AO to DVO on the facts of the case is justified and order of CIT (A) on this point is therefore upheld.

7. **We may also point out here that even if the reference made by the AO to the DVO was not in accordance with law or illegal the valuation report obtained in pursuance of such a reference will be relevant and admissible evidence which can be used by the revenue authorities in the income tax proceedings. This view is supported by the decision of Hon'ble Supreme Court in case of Pooran Mal Vs. Director of Income Tax (Inv.) in ITA No. 261/Mum/2011 Mr. Vijay P. Karnik Page 11 of 13 which it was held that even though the search and seizure had been conducted in contravention of the provisions of section 132 of the IT Act material obtained can be used by the Income Tax authorities.** Thus even if the reference made by AO is considered not valid the valuation report can always be used in the income tax proceedings for the purposes of the Act. The same view has been taken by the decision of Tribunal in case of DCIT Vs. Chaturbhuj Vallabhdas HUF (Supra) in which the Tribunal held that the valuation report having already been obtained by AO and used in the assessment proceedings, the issue of validity or illegality of the reference had become purely academic in view of the judgment of Hon'ble Supreme in case of Pooran Mal Vs. Director of Income Tax (Inv.) (Supra)".

7.3 In view of above, with due respect to the order of Hon'ble Gujarat High Court, the technical and legal contentions raised by the appellant are hereby rejected. Therefore, the addition of undisclosed capital gain of Rs. 10,06,995/- made by the AO is hereby sustained. All the grounds are dismissed.

7. The ld.counsel for the assessee stated that since the ld.CIT(A) had failed to follow the decision of the jurisdictional High Court which was in favour of the assessee, and had even made reference to the same also in his order, the assessee accordingly filed rectification application to the ld.CIT(A) to the effect that not following decision of jurisdictional High Court in the case of the assessee tantamounted to the order passed by the ld.CIT(A) being erroneous. The ld.counsel for the assessee drew our attention to the application filed to the ld.CIT(A) in this regard placed at PB Page No.2 to 5 as under:

> *"2. -*
>
> *The copy of Order of Assessment, Grounds of Appeal and Appellant Order passed by Honble C1T (A) - 4 Ahmedabad is enclosed as annexure 1 - 3, herewith for your immediate reference arid perusal.*
>
> *3.*
> *It is evident that the order of assessment was challenged on one ground that the reference under section 55A of the Act to DVO, by the learned AO was invalid. The appellant was before your office stating that reference to DVO under section 55A was unlawful and therefore order was not tenable in eyes of law.*
>
> *The appellant has placed reliance on the jurisdictional Gujarat High Court on the same point of law as represented in written submissions dated 09/02/2015, as re-produced here-under*
>
> *23.*
>
> *We wish to place reliance on judgments of Hon'ble jurisdictional Gujarat High Court in case of Hitaben Jayantilal Shah vs ITO (2009) 310 ITR 31 (Gujarat High Court). The said judgment directly and fully applied to the facts of the present case. (Copy of decision enclosed as Annexure 4)*
>
> *24.*
>
> *Further decision of Hon'ble ITAT Ahmedabad Bench C in case of ITO vs Nitin Jayantilal Shah ITA No 1988/Ahd/2009 date of order 6/5/2011. Copy of decision is enclosed on Page No 14 to 27 of Paper Book. (Copy of decision enclosed as Annexure 5)*
> *5*
>
> *However the Honble CIT (A) erred by passing order not following order of Hon'ble Gujarat High Court. The CIT (A) has stated in the order as follows:*
>
> *[Page 9 - Para 7.3 of CIT (A) order....*

> *"In view of above, with due respect to the order of Hon'ble Gujarat High Court, the technical and legal contentions raised by the appellant are hereby rejected."*

8. The ld.counsel for the assessee stated that in response to this application filed by the assessee, the ld.CIT(A) passed a very cryptic order stating that allowing rectification of the assessee would tantamount to changing decision of the CIT(A), which he was not inclined to do so. The ld.counsel for the assessee stated that it was evident that even the ld.CIT(A) was aware that not following jurisdictional High Court's decision would tantamount to an apparent mistake in his order, and therefore, his refusal to allow assessee's rectification application was in violation of all principles of law in this regard.

9. The ld.DR however supported the order of the ld.CIT(A).

10. We have considered the rival contentions and have gone through the order of the Ld.CIT(A) impugned before us as also all the documents and other orders referred to before us. The grievance of the assessee before us is against the rejection by the Ld.CIT(A) of the rectification application filed by the assessee u/s 154 of the Act. The assessee had sought rectification of the mistake in the order of the Ld.CIT(A) passed in quantum proceedings of not following the decision of the jurisdictional High Court, cited by the assessee, while deciding the issue of reference made to DVO by the AO for valuation of land sold by the assessee for the purposes of determining its cost of acquisition as on 01-04-1981.

We are inclined to agree with the ld.counsel for the assessee's submissions before us that the rectification order passed by the ld.CIT(A) u/s 154 of the Act is, as per the Ld.CIT(A)'s own admission,

bad in law, having not allowed the rectification despite accepting to the mistake.

11. The contents of the order passed by the Ld.CIT(A) both in quantum proceedings and u/s 154 of the Act on rectification application filed by the assessee ,we agree with the Ld.Counsel for the assessee, itself are self-speaking and loud and clear that the ld.CIT(A) was aware that the decision of the jurisdictional High Court cited by the assessee was applicable in the facts of the case before him.

In his order passed in quantum proceedings, we find, he dismisses assessee's contention of the reference made to DVO by the AO being bad in law relying on a decision of the Hon'ble Delhi High Court, this despite the fact that the assessee cited decision of the jurisdictional High Court in favour of the assessee. The Ld.CIT(A) did so without distinguishing the decision of the jurisdictional High Court cited by the assessee. In fact, he on the contrary implicitly accepted the applicability of the said decision to the facts of the case when he dismissed assesses plea stating in his order "*with due respect to the order of the jurisdictional high court*". This shows that he was aware that the decision of the jurisdictional High court applied to the issue before him

Further, even when the assessee filed a rectification application before him for not following the jurisdictional High Court decision, the Ld.CIT(A) did not distinguish the said decision while dismissing assesses application, but again on the contrary stated that "*accepting assesses application would tantamount to changing the decision* ." This again is an implicit acceptance by the Ld.CIT(A) of the mistake in his order passed in quantum proceedings by not

following the ratio laid down by the jurisdictional High Court on the issue before him.

12. Having admitted to this mistake in his order, there was no other recourse available in law to the Ld.CIT(A) other than allowing assessee's rectification application. His dismissal of the rectification application on the ground that it would change the CIT(A)'s order is in blatant disregard and against all settled principles of law. If a mistake is admitted to have occurred in an order, the same needs to be rectified. There are no two ways about it.

Therefore, without going into the merits of the case, on the basis of the admission of the ld.CIT(A) itself that jurisdictional High Court decision applied in the case of the assessee which he repeatedly implied in his order passed both in quantum proceedings and under section 154 of the Act, we set aside the order of the ld.CIT(A) passed under section 154 of the Act and direct him to allow the assessee's rectification application.

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

Order pronounced in the Court on 7th October, 2022 at Ahmedabad.

Sd/-	*Sd/-*
(SUCHITRA R. KAMBLE)	**(ANNAPURNA GUPTA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad, dated 07/10/2022

vk*