

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” “B” BENCH: BANGALORE**

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.1009/Bang/2022
Assessment Year: 2014-15

ITO Ward-1(2) Bangalore	Vs.	Shri Muni Reddy Santhosh Reddy No.153, Munnireddy Building 14 th Cross, Domlur Village Bangalore 560 071 PAN NO : AIGPR4410F
APPELLANT		RESPONDENT

Appellant by	:	Shri Ganesh R. Ghale, Standing Counsel for Revenue
Respondent by	:	N o n e

Date of Hearing	:	09.02.2023
Date of Pronouncement	:	09.02.2023

O R D E R

This appeal by the revenue is directed against the order of CIT(A) dated 22.6.2022 for the assessment year 2014-15. The revenue has raised following grounds of appeal:-

- 1. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) is right in law in adjudicating upon the matter involved in order passed u/s, 154 of the Act which was neither contested as a separate appeal nor was taken as an additional ground of appeal before Ld.CIT(A) by the assessee?*
- 2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is right in law in admitting additional evidence without recording any reasons, thus violating the provisions of Rule 46A(2)*

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and Rule 46 A(3) of the Income Tax Rules ; particularly when the additional documents/evidences were not produced on the directions of the CIT(A) under Rule 46 A(4)?

2. None appeared for the assessee, hence, we proceed to dispose of the appeal after hearing the ld. D.R.

3. Facts of the case are that Mr. Munireddy Santhosh Reddy (assessee) is engaged in renting of house properties. Returned income for assessment year 2014-15 was Rs. 8,46,510/- which comprised of income from house property, capital gains and other sources. Income-tax assessment of the assessee for assessment year 2014-15 was completed under section 143(3) of the Income-tax Act,1961 ['the Act' for short] vide order dated 14th December 2016 by the Income-tax Officer Ward 1(2)(3), Bangalore (AO). In the return filed, the assessee had claimed exemption under section 54 of the Act to the extent of Rs.1,15,43,000/-. In the assessment, the learned AO disallowed the exemption under section 54 to the extent of Rs. 35,45,943/- resulting in an additional tax payable of Rs. 8,24,700/-. Against the assessment order, the assessee filed an appeal on 30th January 2017. Vide rectification order dated 11th October 2017, the deduction claimed under section 54 of Rs. 82,50,000/- claimed by the assessee was completely disallowed and tax of Rs. 38,16,710/- was levied. Against this assessee filed this appeal before ld. CIT(A), wherein the assessee has raised following grounds before ld. CIT(A).

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1. *“The rectification order of the learned ITO is erroneous and factually incorrect on the following grounds:*

1.1 *Considering the sale of residential property as a sale of "property other than residential property". The appellant was in receipt of rental income until the property was sold.*

1.2 *Wrongly stating that the assessee has claimed deduction of Rs. 82,50,000 under section 54F when the deduction of Rs. 82,85,000 was correctly claimed under section 54. This fact is acknowledged in the assessment order.*

1.3 *In the rectification order, the reason given for rectification is that "it is apparent from records that the assessee did not make investment in a residential house, hence it is proposed to disallow the exemption allowed amounting to Rs. 82,50,000 the assessee". This is incorrect as the appellant has complied with the conditions stipulated under section 54 - i.e (a) reinvestment of capital gain in a residential property and (b) construction of residential property within three years from date of transfer. Therefore, it is incorrect to invoke the provisions of section 154 to rectify the assessment order passed under section 143(3).*

The appellant has constructed buildings on the four sites for which proof of construction shall be furnished at the time of appeal hearings.

2. *Appellant prays that:*

(a) *Rectification order of the learned ITO with Income-tax demand of Rs. 38,16,710 be set-aside and the deduction claimed under section 54 of Rs. 82,85,000 be allowed;*

(b) *The appeal filed earlier against the order under section 143(3) be examined on merits.*

The appellant further craves leave and reserves its right to vary, amend, alter and/or add to the grounds of appeal and to produce such oral and documentary evidence and file such compilation of documents as may be necessary at the time of hearing of the appeal.”

3.1 The ld. CIT(A) adjudicated the appeal by observing as follows:-

6.2 *I have perused the assessment order and the submission of the appellant as above carefully. I find that there are two issues involved in this case which are (i) the*

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rectification order passed u/s. 154 of the Act withdrawing the deduction allowed u/s. 54 of the Act in respect of 3 plots purchased for construction of residential house and (ii) the disallowance of deduction u/s. 54 of the Act made by the AO for the 4th property acquired inter-alia contending that the said plot was not adjacent to the three plots and further that the appellant was entitled to deduction of one residential house and not more.

*6.2.1 As far as rectification order passed u/s. 154 of the Act revoking the already allowed deduction u/s. 54 in respect of three adjacent plots acquired by the appellant for construction of residential house on which residential house had **been** constructed as supported by various documents including the sanction plan, loan sanction letters from Can-Fin Homes, Union Bank of India and Loan from Citi Bank, Bank statements revealing payment to contractors and property tax receipts etc. furnished by the appellant, I am of the considered opinion that the once decided issue u/s. 143(3) of the Act in the assessment order thereby allowing the deduction u/s. 54 considering all factual and legal aspects by the Assessing Officer, cannot be rectified u/s. 154 of the Act which is a decided issue. The same cannot be said as a mistake apparent from the record and therefore the rectification order passed u/s. 154 of the Act by the AO as contested in Ground No. 1.3 in the detailed ground furnished by the appellant was bad-in Law and illegal. Therefore, such Rectification Order passed by the AO revoking the deduction already granted u/s. 54 of the Act in respect of three adjacent plots in which investment was made by the appellant is held as invalid and void. In other words, the investment made in three plots for acquiring a new , asset out of sale proceeds of an old asset / property since used for construction¹ of residential house subsequently within 3 years as provided u/s. 54 of the Act, the same is eligible for deduction while computing the income from -capital gains in the case of the appellant and the AO is directed to allow the same while giving the appeal effect.*

6.2.2 As regards the investment in the fourth property vide Deed No. 8531 dated 28/11/2015 at site No. 44/1 Katha, Survey No. 167 of Rs. 30.00.000/-, I find that the appellant made such investment in the said plot out of the sale proceeds of the property sold on 23/09/2013. I further find that the amount pertaining in such investment had not been kept in the "Capital Gains Account Scheme" as required by the appellant within 6 months from the date of sale of the impugned property on which the income from capital gains was required to be computed. In the instant case, the sale of the property was effected on 23/09/2013 and therefore the sale proceeds should have been deposited by the appellant in the Capital Gains Account Scheme for the future utilization within the provisions of section 54F of the Act. There is no dispute that the investment in another plot was made of Rs. 30,00,000/- on 28/11/2015, but since the said amount had not been retained by the appellant in pursuance to the prescribed norm as provided u/s. 54F of the Act, the appellant was not eligible for deduction under the said section. It was also not disputed that the said plot purchased was not adjacent to the other 3 plots for which the appellant also claimed the deduction u/s. 54 / 54F of the Act and which had also been allowed to the appellant in this appellate order. Therefore, I am of the considered

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opinion that the appellant was not eligible for deduction u/s. 54 / 54F of the Act in respect of 4th plot acquired by utilizing Rs. 30,00,000/- on 28/11/2015. No such decision has also been cited by the appellant against the above mentioned findings of the undersigned. Accordingly, the denial of deduction u/s. 54 / 54F of the Act in respect of the 4th Plot acquired by the Ld. Assessing Officer is hereby confirmed.

6.3 *Ground Nos.1 and 2 raised in the From No.35 and the elaborate grounds further raised in Ground No.1 to 8 are accordingly partly allowed.”*

3.2. Now the contention of the ld. D.R. is that the assessee was in appeal before ld. CIT(A) with regard to assessment order passed u/s 143(3) of the Act dated 14.12.2016 and the assessee has not filed separate appeal with regard to rectification order passed u/s 154 of the Act on 11.10.2017. However, the ld. CIT(A) decided the issue cropped up in the order passed u/s 154 of the Act while adjudicating the appeal against the order passed by AO u/s 143(3) of the Act dated 14.12.2016 without calling for the remand report from the AO. Thus, he submitted that there is a violation of Rule 46A(2), 46A(3) & 46A(4) of the I.T. Rules and the ld. CIT(A) cannot indirectly cannot do what cannot be done directly.

4. After hearing the ld. D.R., I am of the opinion that similar issue came for consideration in the case of Navodaya Foundation Trust in ITA No.49/Bang/2021 dated 15.7.2021 for the AY 2015-16, wherein held as under:

“34. We have heard both the parties and perused the material on record. As per CBDT Circular No.7/2018, the Commissioner could condone the delay in filing Form 10 electronically with the department. While entertaining such application, the Commissioner is required to satisfy that the assessee was prevented by reasonable cause in filing Form 9A and Form 10 within the stipulated time. But this Circular does not preclude the assessee in filing Form 10 manually before the jurisdictional AO. The assessee is not exempted in filing Form 10 manually by this Circular. It only gives power to the Commissioner to permit the assessee to file Form 10 electronically belatedly. However, in the present case, the assessee has not filed Form 10 manually within the stipulated time i.e., before the due date for filing return of income and therefore the assessee cannot avail the benefit of CBDT Circular to cover its own mistake. The appeal of the

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assessee is not against the order of AO passed u/s. 143(1), on the other hand it is against the proceedings u/s. 154 of the Act. Being so, these two orders stand on a different footing. In other words, what could not be done by the assessee directly, cannot be achieved indirectly. The assessee in this case has filed appeal against the order u/s. 154 to challenge the intimation order u/s. 143(1), though there was no appeal against the order u/s 143(1) passed by the CPC. Being so, we are not in agreement with the ld. A.R. for the assessee so as to exempt the assessee in filing Form 10 manually before the jurisdictional AO. Accordingly, this ground of the assessee is rejected.

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42. We have heard both the parties and perused the material on record. As rightly held by the CIT(A), this issue is not emanating from the order passed u/s 154 of the Act. The assessee cannot use proceedings u/s 154 to file appeal against the order passed u/s 143(1) of the Act. Accordingly, we have no hesitation in rejecting this ground of assessee."

4.1 In the present case also, the assessee filed appeal against the order passed by AO u/s 143(3) of the Act dated 14.12.2016. There was no appeal by assessee against the rectification order passed u/s 154 of the Act dated 11.10.2017. Even if the assessee raised the ground in his appeal with regard to addition/deletion made in rectification order passed u/s 154 of the Act before the ld. CIT(A), the ld. CIT(A) must have called for the remand report from the AO, which he failed to do so. Being so, in the interest of justice, we remit the entire issue in dispute to the file of CIT(A) to consider afresh and decide the issue after giving fair opportunity of hearing to both the parties.

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5. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 9th Feb, 2023

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 9th Feb, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.