IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'G' NEW DELHI]

BEFORE Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER
I.T.A. No. 5074/DEL/2012 (A.Y. 2008-09)

Ashwani Kumar, Legal Heir of late Smt. Shanti Devi, 14, Urban Estate-II, Hissar, Haryana. **PAN No. ANPMD9735C** **(APPELLANT)**	Vs.	CIT, Hissar, Haryana. **(RESPONDENT)**

Assessee by : **Shri Satish Khosla, Adv.; &**
Shri Manu K. Giri, Advocate.

Department by : **Shri H. K. Choudhary, [CIT] - D. R**

Date of Hearing	**27.02.2023**
Date of Pronouncement	**23.03.2023**

ORDER

PER YOGESH KUMAR US, JM

1. This appeal is filed by the assessee against the order dated 31.07.2012 of the ld. Commissioner of Income Tax (Appeals) [(hereinafter referred to CIT(Appeals)], Hissar, for assessment year 2008-09.

2. The assessee has raised the following grounds of appeal :-

"1. Order passed under section 263 by the CIT is erroneous and bad law as it is passed without laying the foundation for the assumption of jurisdiction.

2. The CIT ought to have appreciate that at the time of examination of records of the assesse order passed by the Assessing Officer was not prejudicial to the interest of the revenue.

3. The CIT ought to have appreciated that in the return filed by the assesse interest income was inadvertently shown as taxable which was rectified by the assessing officer.

4. The CIT ought to have appreciated that the Union of India does not require to levy tax on an amount returned by mistake. The sovereign authority does not want to take advantage of a mistake committed by an assesse. It is not the policy of the Sovereign State to crave for undue enrichment.

5. The CIT ought to have appreciated that the Circular issued by the 11.04.1955 enjoins upon the assessing officers not to take advantage of the ignorance of the assesse. This circular is binding on the revenue authorities. As such the Assessing Officer followed the spirit of the Circular while rectifying the order under section 154.

6. The CIT failed to appreciate that the Assessing Officer is concerned with the assessment and collection of the revenue, and the power to rectify the order is conferred upon him to ensure that no injustice to the revenue or to the assesse in done.

7. Your petitioner has reserve to right to change, alter, add or modify the any grounds of appeal.

8. That the order passed by the CIT Hissar (Haryana) shall be set aside and grant necessary relief to your petitioner."

3. Brief facts of the case are that the assessee is an agriculturist and assessee's land has been acquired by the Govt of Haryana under the Provisions of Land Acquisition Act. The amount of compensation awarded by the Additional District Judge in has been challenged by the assessee before Punjab and Haryana High Court for enhancement of compensation and the compensation has been enhanced by the Hon'ble High Court. Thereafter, the assessee filed her return of income for the year under consideration on 31.03.2009 showing interest of Rs. 2,41.16.305/- accrued on the said FDRs and also interest received on acquisition of land under the head "Income from other sources". The Land Acquisition Collector deducted the tax at source from the interest which was deposited to the account of Central Govt. In the return of filed by the assessee the interest was shown as taxable income since the issue regarding taxability of interest of compensation was not settled as on the

said date. The said return was processed u/s 143(1) of the Act. Subsequently, a decision of the Hon'ble Supreme in the case of CIT v. Ghanshyam Dass(HUF) reported in (2009) 315 ITR 1 (SC) came to be passed on 16.07.2009 wherein, it has been held that the interest awarded under the Land Acquisition Act is not taxable. The assessee filed application u/s 154 requesting that intimation u/s 143(1) of the Act may be amended by following the order of the Hon'ble Supreme Court in the case of Ghanshyam HUF (supra). The AO allowed the application filed by the assessee u/s 154 of the Act on 05.04.2011 by rectifying the mistake and held that the interest awarded is not taxable in following manners:-

> *"3. The assessee has also contended vide her application U/s 154 of the Act, referred to above, that the Hon'ble Punjab & Haryana High Court has held in the case of CIT vs. Aruna Luthra (2001) 252 ITR 76 (P&H) that the power of rectification u/s 154 can be invoked even when an issue is decided by the jurisdictional High Court or a superior court after the order has been passed. It has been held in this case that when a court interprets a provision, it decides as to what is the meaning and effect of the words used by the legislature. It is a declaration regarding the statute. In other words, the judgement declares as what the legislature had said at the time of the promulgation of the law. The declaration is -This was the Law, This is the Law. It has also been added by the assessee that in view of the above judgement, the case law of Ghanshyam Dass HUF is squarely applicable in the instant case also. The assessee has also relied upon the judgement in the case of case of Nav Nirman (P) Ltd. Vs. CIT (1988) 174 ITR 574 (MP) wherein the Hon'ble Madhya Pradesh High Court has held that in the circumstances of a given case, if a mistake is discovered in an order on the basis of a subsequent judgement of the High Court, then it may be considered as a mistake apparent of the record and a ground for rectification. In view of the judgements relied upon, the mistake apparent from records in this case, as discussed above in detail, is rectifiable U/s 154 of the Act.*
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> *4. On verification, the contention raised by the assessee is found to be acceptable, as interest of Rs. 2,41,16,305/- is interest awarded U/s 28 of the Land Acquisition Act, which forms part of 'Compensation' and is, therefore, exempt U/s 10(37) of the Act. Since the 'interest income' already declared at Rs.2,41,16,305/- acquires the nomenclature of 'Compensation' consequent upon delivery of judgement by the Hon'ble Apex Court in the case of Ghanshyam, HUF, which is applicable in this case also in view of the judgements relied upon by the assessee, hence it is exempt U/s 10(37) of the Act. The mistake apparent from records is, therefore, rectified U/s*

154 of the Act, read with Section 155(16) of the Act, recomputing the total income of the assessee as under:

Income declared by the assessee Less:	*2,40,60,270/-*
Interest awarded U/s 28 of the Land" Acquisition Act, as discussed Above	*(-) 2,41,16,145/-*
Total Income	*(-) 55,875/-*

Plus Agri. Income at Rs.20,000/-, as declared by the assessee."

4. The ld CIT by exercising the powers conferred u/s 263 of the Act declaring that the order passed u/s 154 by the AO is null and void and set aside the same in following manners:-

> *"15. On due consideration of the facts and circumstances of the case. I am of the considered view that the Assessing Officer has acted beyond his powers and the order u/s 154 of the Income Tax Act, 1961 dated 05.04.2011 for the assessment year 2008-09 15. therefore, held to be erroneous in so far as it is prejudicial to the interest of the revenue Needless to mention that had the said rectification orders not been made, there would not have arisen the (undue) refund and as a result, interests of the revenue have adversiy been affected. Further, the impugned order of the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the revenue as it is in clear violation of the legal provisions contained in the Income Tax Act, 1961."*

5. Aggrieved by the order of the ld CIT the assessee has preferred the present appeal on the ground mentioned above.

6. The ld Counsel for the assessee submitted that the ld CIT has not appreciated that at the time of examining the records of the assessee and the order passed by the AO was not prejudicial to the interest of revenue. The ld CIT ought to have appreciate that in the return filed by the assessee interest income was inadvertently shown as taxable since the law on the said issue was not settled. Order of the ld CIT is contrary to the ratio laid down in the case of Ghanshyam HUF (supra). Further, submitted that the Circular issued by CBDT

No. 68 dated 17.11.1971 states that subsequent interpretation of the law could constitute a mistake apparent from the record and therefore, the order of the ld CIT deserves to be quashed.

7. On the other hand the ld DR submitted that the AO travelled beyond the jurisdiction in exercising the power conferred u/s 154 of the Act when there is no error apparent from the record. Therefore, submitted that the appeal deserves to be dismissed.

8. We have heard the parties and perused the material on record. It is not in dispute that the assessee had been awarded compensation along with interest and the assessee filed her return showing the said interest income as taxable and the tax has been collected at source. The issue regarding whether interest awarded under the land Acquisition Act is taxable or not, has been settled by the Hon'ble Supreme Court in the case of Ghanshyam HUF (supra) declaring that the interest awarded under the Land Acquisition Act is not taxable. Such being the case, the remedy available to the assessee is to bring to the notice of the AO regarding passing of the judgment in the case of Ghanshyam HUF (supra) and get the other rectified. The said method is also in-conformity with the Circular issued by CBDT No. 68 dated 17.11.1971 wherein, it is stated that the subsequent interpretation of law could constitute a mistake apparent from the record. Further, as on the date of examination of the record of the assessment order it is not prejudicial to the interest of the revenue. The right tax had to be collected from the right person. The reason for exercising power conferred u/s 263 by the ld CIT is that the return of income had to be filed without any paper i.e. it was paperless filing of return of income, even if the assessee had attached the document along with return and same will be taken off the record. Therefore, held that the ld AO has committed an error in exercising power u/s 154 of the Act. In our opinion the income tax proceeding are not adversarial it is not material as to who committed the mistake, the fact that a mistake has been committed and the same has to be

rectified. The Rajkot Bench of Tribunal in the case of Rupam Impex in ITA No. 472/RJT/2014 for AY 2008-09 held as under:-

> *"A lot of emphasis is placed on the fact that the mistake was committed by the Assessee himself which has resulted in the error creeping in the assessment order as well. Instead of being apologetic about the complete non application of mind to the facts and making a mockery of the scrutiny assessment proceeding itself, the Assessing Officer has justified the mistake on record on the ground that it is attributed to the Assessee. The income tax proceedings are not adversarial proceedings. As to who is responsible for the mistake is material for the purpose of proceedings under section 154; what is materilis that there is a mistake - a mistake which is clear, glaring and which is incapable of two views being taken. The fact that mistake has occurred is beyond doubt. The fact that it is attributed to the error of the Assessee does not obliterate the fact of mistake or legal remedies for a mistake having crept in. It is only elementary that the income liable to be taxed has to be worked out in accordance with the law as in force. In this process, it is not open to the Revenue Authorities to take advantage of mistakes committed by the Assessee. Tax cannot be levied on an Assessee at a higher amount or at a higher rate merely because the Assessee, under a mistaken belief or due to an error, offered the income for taxation at the amount or that rate. It can only be levied when it is authorised by the law, as is the mandate of Article 265 of the Constitution of India. A sense of fairplay by the field officers towards the taxpayers is not an act of benevolence by the field officers but it call of duty in a socially accountable governance. If Authority is needed even for justifying this approach to the taxpayers, one need not look beyond the circulars issued by the CBDT itself."*

9. The Bangalore Bench of ITAT in the case of M/s. Bellary Educational Services Trust Vs. Deputy CIT (Exemption) in ITA No. 104/Bang/2021 has relied on the Circular No. 68 dated 17.11.1971 wherein, it is held that the interpretation by the Hon'ble Supreme Court if not followed in the order the same may constitute a mistake apparent from the record. The relevant portion of the same are as under:-

> *"11……The decisions of the Hon'ble Supreme Court cited by the learned Counsel for the assessee supports the case of the assessee. In the CBDT's Circular No.68 dated 17.11.1971 supports the plea of the assessee that an interpretation of law by the Supreme Court if not followed in an assessment could constitute a mistake apparent from the record and therefore rectifiable under section 154 of the Act. In this background of facts, we are of the view that there was a mistake apparent on the face of the record which ought to have been rectified under section 154 of*

the Act. It is clear from the order passed under section 154 of the Act that the AO has computed accumulation of 15% on the net revenue after reducing all the expenditures in the form of application of income for charitable purpose. This approach of the AO was clearly contrary to the decision of the Hon'ble Supreme Court cited by the learned Counsel of the assessee. In these circumstances, we are of the view that the mistake sought to be rectified by the assessee ought to have been rectified by the Revenue authorities. Accordingly, we direct the AO to allow accumulation under section 11(1)(a) of the Act as claimed by the assessee in the application under section 154 of the Act."

10. In view of the above discussion and considering the fact that the interest awarded under Land Acquisition Act is not taxable as held by the Hon'ble Supreme Court, the department cannot demand to pay the tax on the same by way of invoking section 263 of the Act, therefore, we hold that the order of the ld CIT is erroneous. Accordingly, we quash the impugned order passed by the ld CIT u/s 263 and uphold the order passed by the ld AO u/s 154 of the Act.

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

Order pronounced in the open court on : **23/03/2023.**

(Dr. B.R.R. KUMAR)	**(YOGESH KUMAR US)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 23/03/2023

MEHTA/ AK Keot

Copy forwarded to :-

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI