

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad 'B' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member**

*AND*

**Shri K.Narasimha Chary, Judicial Member**

ITA No.260/Hyd/2022		
Assessment Year: 2016-17		
Mrs. Vijayaraghavan Lakshmi Ground Floor, Block-A Prince Villa, New No.15 Rajamannar Street Teynampet Chennai-600 018 Tamilnadu  PAN : AABPL7182P	Vs.	ACIT, Central Circle-1(2) Aaykar Bhawan Opp:L.B.Stadium Basheerbagh Hyderabad
(Appellant)		(Respondent)
Assessee by:		Shri A. Srinivas, CA
Revenue by:		Shri V.M.Mahidhar, Sr.AR
Date of hearing:		09.05.2023
Date of pronouncement:		11.05.2023

**ORDER**

**Per Shri Rama Kanta Panda, A.M.**

This appeal filed by the assessee is directed against the order dated 27.04.2022 of Learned Commissioner of Income Tax (Appeals)-11, Hyderabad relating to AY 2016-17.

2. Facts of the case, in brief, are that the assessee is an individual and is a professional interior decorator. She filed her return of income on 16.10.2016, declaring total income of Rs. 29,35,780/-. The case was selected for scrutiny and the AO passed the order u/s. 143(3) on 06.12.2018 wherein he had made addition of Rs. 1,56,71,710/- by bringing to tax the long term capital gain by denying the exemption u/s. 54 and made

addition of Rs. 46,35,194/- on account of denial of cost of improvement.

2.1 Subsequently, a search and seizure operation u/s.132 of the I.T.Act, 1961 was carried out in case of the assessee on 20.11.2019. In response to notice u/s. 153A issued on 08.06.2021 which was duly served on the assessee to file return of income for the impugned assessment year, the assessee did not file any return of income. However, in response to notice u/s. 143(2) and 142(1), the AR of the assessee appeared before the AO and filed relevant details. After due verification and examination of the seized/impounded material and information furnished by the assessee during assessment proceedings, the AO accepted the income originally returned at Rs. 29,35,780/-.

2.2 Subsequently, the AO noted that the assessment was completed u/s. 143(3) for AY 2016-17 on 06.12.2018 wherein the income was determined at Rs.2,32,42,684/- and demand of Rs.66,75,521/- was raised. The AO, therefore, issued a notice u/s. 154 of the Act proposing to rectify the assessment. Since the assessee did not respond to the notice issued u/s. 154 of the Act, the AO in the order passed u/s. 154, determine the assessed income at Rs. 2,32,42,684/-.

3. Before the Id.CIT(A), the assessee stated that the AO passed the order u/s. 154 of the Act bringing into taxation an amount which was never the subject matter of the assessment u/s. 153A. It was argued that the AO in the assessment order passed u/s. 153A on 22.09.2021 has completed the assessment after due verification and thus rectifying and adding an amount of Rs. 2,03,06,904/- tantamounts to change of opinion and therefore, such rectification order is not a valid one. The provisions of section 154 were also brought to the notice of the Id.CIT(A).

4. However, the ld.CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the 154 order passed by the AO by observing as under:-

6. *In the instant case, notice u/s. 153A was issued to the appellant and no return was filed in response to the same. It was observed by the Assessing Officer that the original income for AY 2016-17 was filed on 16.10.2016 at an income of Rs. 29,35,780/-. The Assessing Officer completed the assessment u/s. 153A and assessed the income at the income filed originally on 16.10.2016 at Rs. 29,35,780/- and demand of Rs. 66,75,521/- was raised. The appellant did not dispute the demand and did not file an appeal against the said order in response to notice u/s. 156 to pay the demand.*

*Subsequently, the Assessing Officer observed that assessment was completed u/s. 143(3) for AY 2016-17 on 06.12.2018 in the case of the appellant and the assessed income was determined at Rs. 2,32,42,684/- and demand of Rs. 66,75,521/- was raised. Accordingly, the Assessing Office issued the notice u/s. 154 noting that the income u/s. 143(3) for the same AY was determined at Rs. 2,32,42,684/- whereas the income was determined at Rs. 29,35,780/- in the 153A order and that the same has to be rectified. The appellant did not reply to the notice u/s. 154 and the Assessing Officer raised the same demand as raised while passing the order u/s. 153A on 22.09.2021 but only changed the assessed income to Rs. 2,32,42,684/-. The appellant has filed an appeal stating that Assessing Officer erred in passing the order u/s. 154 which is not subject matter of 153A.*

*The Assessing Officer has rightly taken the last assessed income as a base for determining the income u/s. 153A and has raised identical demand which is apparent from record. It is important to bring light to the clarificatory CBDT Circular No.7 of 2003 dated 05.09.2003 issued on Explanatory Notes on provisions relating to Direct Taxes with regard to Finance Act, 2003, in which it was stated as under:*

*“65.5 The Assessing Officer shall assess or reassess the total income of each of these six assessment years. Assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under section 132 or requisition under section 132, as the case may be, shall abate. **It is clarified that the appeal, revision or rectification proceedings pending on the date of initiation of search under section 132 or requisition shall not abate.** Save as otherwise provided in the proposed section 153A, section 153B and section 153C, all other provisions of this Act shall apply to the assessment or reassessment made under section 153A. It is also clarified that assessment or reassessment made under section 153A shall be subject to interest penalty and prosecution, if applicable. In the assessment or reassessment made in respect of an assessment year under this section,*

*the tax shall be chargeable at the rate or rates as applicable to such assessment year.”*

*The 143(3) proceedings are independent proceedings and the tax liability will be determined on the basis of the same and any relief in that proceedings would result in a reduced tax liability. The subsequent proceedings u/s. 153A cannot be efface the original proceedings and the Assessing Officer has merely substituted the last assessed income and has been rightly done as the Assessing Officer does not have any reason or jurisdiction to deliberate on the earlier assessment proceedings which have been completed and are following the regular route of appeals, if any. The appeal for the same year is pending regarding 143(3) and the adjudication of the same would determine the tax liability accordingly. The Assessing Officer has merely followed the last assessed income concept and has only substituted the correct last assessed income as per records without changing the tax liability as per the last assessed income and the same demand was raised u/s. 153A which was not challenged by the appellant*

*In view of the same, the appeal is hereby dismissed and there is no change of opinion but a substitution of the last assessed income as per records and the demand not being a subject matter of 154 proceedings as it is identical to the demand raised in 153A proceedings. In view of the same, the ground no.2 and 3 are dismissed. The ground no.1 and 4 are general in nature and need no separate adjudication.*

*It is further to be noted that with regard to assessment order u/s. 143(3), the assessed income was Rs. 2,32,42,684/- and demand of Rs. 66,75,521/- was raised and with regard to assessment order u/s. 153A, the assessed income was rectified vide order u/s. 154 to Rs. 2,32,42,684/- and demand of Rs. 66,75,521/- was raised. However, it is clarified that there cannot be two demands for the same assessed income under different sections of assessment orders and therefore, the demand raised in respect of assessment order u/s. 143(3) only stands.*

*To sum up the appeal is dismissed.*

5. Aggrieved with such order of the Id.CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds.

1. *The order of the Appellate Commissioner is contrary to law, facts and circumstances of the case.*

2. *The Appellate Commissioner erred in confirming the order passed u/s.154 by the A.O, bringing into taxation an amount which was never the subject matter of the assessments u/s.1543A*

3. *The Appellate Commissioner erred in confirming the rectification order of the A.O, when in fact the original Assessment Order passed u/s.153A*

*on 22.09.2021, which was competed after due verification and was not a mistake apparent from record.*

*4. The Appellate Commissioner erred in confirming the rectification order passed u/s.154 , when the order rectifying and adding an amount of Rs.2, 03, 06, 904/-, tantamount to change of opinion and thus is to be struck down.*

*5. Any other grounds which the Assessee may urge either before or at the time of the hearing.*

6. The ld.counsel for the assessee referring to page 1 of the paper book, drew the attention of the Bench to the return filed on 16.10.2016 declaring total income at Rs. 29,45,778/-. Referring to the computation statement filed along with return of income, copy of which is placed at page 2 to 4 of the paper book, he drew the attention of the Bench to page 3 of the paper book and submitted that as per Clause 6, the assessee has declared long term capital gain at 'nil' after claiming the amount of Rs. 1,60,00,000/- deposited in the long term capital gain scheme in Andhra Bank on 21.04.2016 out of the long term capital gain of Rs.1,56,71,710/-. Referring to page 5 to 11 of the paper book, which is the assessment order passed on 06.12.2018 u/s. 143(3), he submitted that the AO has determined the total income of the assessee at Rs.2,32,42,684/-. Referring to page 23 of the paper book, he drew the attention of the Bench to the return filed u/s. 153A on 17.09.2021 declaring total income of Rs. 29,35,780/-. Referring to the computation statement filed along with return of income, copy of which is placed at page 24 to 26 of the paper book, he drew the attention of the Bench to clause 6 of the same and submitted that the same amount of long-term capital gain was declared out of which an amount of Rs. 1,60,00,000/- was deducted being deposited in the long-term capital gain scheme with Andhra Bank on 21.04.2016. Referring to page 28 of the paper book, he drew the attention of the Bench to the annexure to the notice issued u/s. 142(1) for the AY 2016-17. Referring to page 29 and 30 of the paper book, he drew the attention of the

Bench to the reply in response to notice u/s. 142(1) dated 15.07.2021, according to which there is no difference between the income declared in the original return of income filed u/s. 139 and the return filed u/s. 153A. Referring to page 31 of the paper book, he drew the attention of the Bench to the revised return filed on 23.10.2018 for AY 2018-19 declaring total income of Rs.1,81,12,950/-. Referring to page 32 to 34 of the paper book, he drew the attention of the Bench to the computation statement and submitted that the assessee has declared long term capital gain of Rs.1,56,71,710/- for AY 2018-19. Referring to page 35 of the paper book, he drew the attention of the Bench to the return filed u/s. 153A for AY 2018-19 declaring total income of Rs. 1,81,12,950/-. Referring to page 43 to 45 of the paper book, he drew the attention of the Bench to the assessment order passed u/s. 143(3) r.w.s. 153A on 24.09.2021 wherein the long term capital gain, which was the subject matter of assessment year 2016-17, has been added. He submitted that the AO, who has passed the order u/s. 154 for AY 2016-17, has passed the order u/s. 143(3) r.w.s. 153A for AY 2018-19 wherein the same addition has been made. He submitted that the addition made in AY 2016-17 is subject matter of appeal before the Id.CIT(A) which is still pending. The Id.Counsel for the assessee submitted that once the AO has made the addition in AY 2018-19, passing the order u/s. 154 to bring the same amount to tax in AY 2016-17 is not justified. He accordingly submitted that the order passed u/s. 154 of the Act by the AO and upheld by the Id.CIT(A) is not justified.

7. The Id.DR on the other hand heavily relied on the order of the Id.CIT(A). He submitted that the AO passed the original assessment order determining the total income at Rs. 2,32,42,684/- against the returned income of Rs. 29,35,780/-. The assessee is in appeal before the Id.CIT(A) challenging the additions made in AY 2016-17 in the original proceedings.

Therefore, when the search took place and the AO completed the assessment u/s. 143(3) r.w.s. 153A, he should have brought to tax the original amount determined. Since in the order passed u/s. 143(3) r.w.s. 153A, the AO had accepted the returned income without rectifying the figure of the assessed income, there was an apparent mistake in the order and therefore, the Id.CIT(A) was fully justified in upholding the rectification order passed by the AO.

8. We have considered the rival arguments made by both the sides, perused the orders of the AO and Ld.CIT(A) and the paper book filed on behalf of the assessee. We find the AO completed the original assessment u/s. 143(3) on 06.12.2018 determining the total income of the assessee at Rs. 2,32,42,684/- against the returned income of Rs. 29,35,780/- by making two addition i.e. Rs. 1,56,71,710/- and Rs.46,35,194 respectively. The assessee has filed an appeal before the Id.CIT(A) against the above two additions which is still pending. In the mean time a search took place on 20.11.2019 and the AO completed the assessment u/s. 153A on 22.09.2021 assessing the income originally returned at Rs. 29,35,780/-. Since the AO, instead of assessing the income at Rs. 2,32,42,684/- as per the original order has assessed the income at Rs. 29,35,780/-, he passed a rectification order u/s. 154 rectifying the income at Rs. 2,32,42,684/- as against Rs. 29,35,780/-. We find the Id.CIT(A) upheld the action of the AO in passing the order u/s. 154, the reasons of which have already been reproduced in the preceding paragraph.

9. We do not find any infirmity in the order of the Id.CIT(A) on this issue. We find the Id.CIT(A) while upholding the action of the AO held that there is no change of opinion but a substitution of the last assessed income as per record and the demand not being

a subject matter of 154 proceedings as it is identical to the demand raised in 153A proceedings. So far as the submission of the ld.counsel for the assessee that the AO has made the addition in AY 2018-19 and therefore, the same could not have been rectified in the 154 proceedings is concerned, the same in our opinion is without any merit. In the original order, the AO had made the addition on the ground that assessee has deposited the money in the long-term capital gain account scheme beyond the due date and has also withdrawn the amount before the period of three years. The relevant observation of the AO in the original order at para 8 and 9 reads as under: -

*8. In view of the above reply received from M/s. Andhra Bank, it is apparent that the receipt of capital gains has been deposited in capital gains scheme on 21.10.2017 which is beyond the due date for filing return of income for the AY 2016-17. As per the provision of section 54 of the Income Tax Act, 1961, if the sale consideration is not utilized for purchase/construction of new asset, then the consideration should be deposited in capital Gain account scheme" before the due date of filing return of income and the deposits should be for 3 years. However in the instant case as the assessee had violated the provisions of section 54 by depositing the sale consideration on 21.10.2017 which is beyond the due date of filing return of income and pre-closing the "Capital Gain Deposits Scheme" on 23.01.2018 before 3 years i.e, the deposit should be from 26.10.2015 to 26.10.2018 without investing the same subsequently in the purchase/construction of new asset, the assessee was given opportunity to show cause as to why not the claim made by the assessee u/s. 54 be denied and added back to the total income of the assessee and taxed as per provisions of Income tax Act, 1961 vide letter No. ITBA/AST/F/17/2018-19/1013801565(1) dated 26.11.2018. In response to the same, the AR filed letter dated 27.11.2018 stating that the deposits were originally made on 21.04.2016 and was being renewed without encashment and thus were with the bank in designated account as capital gains deposits from 21.04.2016 till they were withdrawn on 23.01.2018. Thus the deposits were made within time limit as given in the Act and well before due date for furnishing the return of income for the AY 2016-17. He did not give any explanation for the bank's declaration that the deposits were made on 21.10.2017 i.e beyond the time limit for filing the return of income. The scanned copy of the reply received from M/s. Andhra Bank in response to notice u/s. 133(6) is herewith attached produced below:*

171  
P/forward 9  
The AO Cane  
19/11/18

**ANDHRA BANK**  
(A GOVT OF INDIA UNDERTAKING)  
1325-GACHIBOWLI : HYDERABAD II ZONE  
Mail ID :bm1325@andhrabank.co.in  
Phone No: 040-23468502

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LI no. 1325/IT/62 12.11.2018

TO,  
THE MANAGER,  
INCOME TAX DEPARTMENT,  
NON CORP.WARD 20(5) CHENNAI.

SUB : FDCGS Account details of Mrs.VIJAYARAGHAVAN LAKSHMI for 2016-17

REF : Notice No ITBA/AST/S/133(6)/2018-19/1011728618(1) DT 23.08.2018

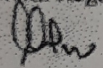
Dear Sir/Madam


With reference to the above notice regarding Mrs.VIJAYARAGHAVAN LAKSHMI

We herewith furnishing the details for your information.

FDCGS Account has been opened for Rs 1,60,00,000.00 (ONE CRORE SIXTY LAKHS ONLY) in the name of VIJAYARAGHAVAN LAKSHMI on 21.10.2017 with maturity date 21.04.2018. The same account has been closed on 23.01.2018.

All necessary documents have been taken at the time of closure.

With Regards,  
  
Y VENU GOPAL  
CHIEF MANAGER  
ANDHRA BANK  
GACHIBOWLI BRANCH  
HYDERABAD  
040-23458502



9. Further, the AR stated that " THE DEAL OF ACQURING THE PROPERTY COULD NOT BE PASSED THROUGH DUE TO VARIOUS REASONS AND HENCE, THE ACCOUNT WAS CLOSED ON 23.01.2018 AND THE AMOUNT WAS WITHDRAWN. AS THE AMOUNT WAS WITHDRAWN AND THE PROPERTY COULD NOT BE ACQUIRED OR CONSTRUCTED WITHIN STIPULATED TIME LIMIT, THE AMOUNT SO WITHDRAWN IS OFFERED TO TAX IN THE REVISED RETURN FOR THE AY 2018-19 FILED ON 23.10.2018 AND TAXES PAID ON THE AMOUNT AS LONG TERM CAPITAL GAIN IN THIS YEAR ALONG WITH INTEREST FOR LATE PAYMENT OF THE SAID TAXES." The statement of the AR shows that the assessee had intentionally concealed the income or made false claim of sec. 54. Vide his submission on 21.08.2018 .i.e just 2 days before filing revised return for the AY 2018-19, the assessee herself stated that the duration of deposit is renewed and has not expired

*till date. Just to escape from penalty provisions, the assessee had cleverly took a back from her words and filed revised return for the AY 2018-19 disclosing long term capital gains. The offer of Long Term Capital Gains in the revised return was not made voluntarily before detection by the department. Hence, the submission of the AR on 27.11.2018 is not accepted since the claim is a deliberate default & not bonafide. Further, it shows the intention of the assessee to conceal the income and if the scrutiny assessment would have not initiated the assessment of the capital gains would have escaped from the assessment.*

*In view of the above the exemption claimed u/s. 54 for Rs..1,56,71,710/- is added back to the total income of the assessee for the AY 2016-17 and taxed accordingly.*

*Long Term Capital Gains - Rs.1,56,71,710/-*

10. Thus, it is seen that although, the assessee has offered the income to tax in the AY 2018-19, however the AO has brought to tax the same in AY 2016-17 and the matter is still pending before the ld.CIT(A). Under these circumstances, when there was an apparent mistake in the order of the AO in accepting the returned income instead of substituting the same with the assessed income there was an apparent error and the AO was fully justified in rectifying the same. The proposition of the ld.counsel for the assessee that there cannot be addition of the same amount in two different assessment years is correct. However, it is to be seen as to in which year, the addition has to be made. Merely, because the AO has retained the addition in AY 2018-19 as per the income returned by the assessee, it cannot be said that the income cannot be brought to tax in AY 2016-17 especially when the appeal is still pending before the ld.CIT(A). In view of the above discussion and in view of the detailed reasoning given by the ld.CIT(A) on this issue, we do not find any infirmity in his order. Accordingly, the same is upheld and the grounds raised by the assessee are dismissed.

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

Order pronounced in the Open Court on 11<sup>th</sup> May, 2023

<b>Sd/-</b> <b>(K.NARASIMHA CHARY)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(RAMA KANTA PANDA)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 11<sup>th</sup> May, 2023

*Thirumalesh/sps*

Copy to:

S.No	Addresses
1	Mrs. Vijayaraghavan Lakshmi Ground Floor, Block-A, Prince Villa, New No.15 Rajamannar Street, Teynampet Chennai-600 018, Tamilnadu
2	ACIT, Central Circle-1(2) Aaykar Bhawan Opp:L.B.Stadium Basheerbagh Hyderabad
3	Prl.CIT(Central), Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*