

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES,"A" JAIPUR

श्रीसंदीपगोसाई, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 109/JP/2023  
निर्धारणवर्ष/AssessmentYear :2012-13

Shri Mohammed Siraj S/o Mustak, Mohalla Chopdaran, Rani Sati Road, Jhunjhunu – 333 001 (Raj)	बनाम Vs.	The ITO Ward -1 Jhunjhunu
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: DOTPS 2189 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri R.S. Poonia, CA &  
Shri Rajat Choudhary, Adv.  
राजस्व की ओर से / Revenue by: Shri A.S. Nehra, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 16/05/2023  
उदघोषणा की तारीख / Date of Pronouncement: 28 /06/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A) dated 10-01-2023, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2012-13 wherein the assessee has raised the following grounds of appeal.

“1. That the order passed by the Id. CIT(A) is bad in law, wrong on the facts and against the principles of natural justice.

2. That the Id. CIT(A) has erred on facts and in law in confirming the addition of Rs.3,11,500/- by disallowing the indexed cost of improvement to the income of the assessee on this count is wrong, unwarranted and bad in law. Kindly delete the addition.

3. That the Id.CIT(A) has erred on facts and in law in confirming the addition of Rs.2,29,552/- u/s 50C of the Act to the income of the assessee on this count is wrong, unwarranted and bad in law. Kindly delete the addition.”

2.1 Besides above grounds, the assessee has submitted following two additional grounds of appeal in the present case.

“1. That the AO has erred on facts and in law by traveling beyond the issue of reassessment u/s 147, if the addition does not sustain on the ground of reopening then the action u/s 154 is unwarranted and addition is not sustainable in law. Kindly quash the entire proceedings u/s 154 of the Act as the case is reassessment not assessment.

2. That the AO has erred on facts and in law by invoking the Section 154 for rectification of mistake apparent on record as the issue involved are not covered under mistake apparent on record under the scope of 154 of the Act. Kindly quash the rectification order u/s 154 or delete the addition.

3.1 Brief facts of the case are that the return of income was filed by the assessee on 21-03-2014 declaring total income at Rs.1,68,450/-. Subsequently, assessment u/s 143(3)/147 was completed on 5-12-2019 at the total income of Rs.1,68,450/-. The AO on perusal of the assessment record for the assessment year under consideration noticed that the assessee filed the Income Tax Return on 21-03-2014

declaring total income at Rs.1,68,450/- under the head income from other sources.

A notice u/s 148 had been issued served to assessee 26-03-2019. In compliance to notice u/s 148, the assessee filed ITR on 19-09-2019 declaring total income Rs.1,68,450/- late by six months. The assessee sold six plots for sale consideration of Rs.17,20,000/- during previous year. After claiming indexation cost of acquisition of Rs.62,800/-, indexation cost of construction of Rs.3,11,500/-, deduction u/s 54B of Rs.13,45,700/- declared LTCG at Rs Nil. It is also noted that the stamp valuation authority valued these six plots amounting to Rs.19,49,552/- u/s 50C and this amount was to be considered full value of consideration which was not done during the assessment u/s 143(3)/147. It is also noted that as per sale agreements there was no construction on these six plots, hence indexation cost of construction of Rs.3,11,500/- was to be disallowed. It is further noted from the order u/s 154/143(3)/147 of the Act that the omission had resulted into under computation of LTCG income of Rs.5,41,052/- having under charge of tax at Rs.5,02,533/- including interest 234A of Rs.5,664/- and u/s 234B of Rs.87,792/-. The AO thus observed that this mistake apparent from the record was to be rectified u/s 154 of the Act. Accordingly, a notice u/s 154 of the Act was issued on 27-07-2021 to the assessee asking as to why the indexation cost of construction of Rs.3,11,500/- should not be disallowed and taxed accordingly. It is also noted that the assessee neither nor any A/R furnished written submission nor which

according to the AO shows that the assessee has no objection for rectification and accepted the mistake. The AO taking into consideration all the facts and records added an amount of Rs.5,41,052/- to the total income of the assessee by observing as under:-

“4. Therefore, looking to the facts and circumstances of the case, the mistake apparent from record and an amount of 5,41,052/- is added to the total income of the assessee being under computation of LTCG income for the year under consideration and recomputed as per provisions of the I.T. Act 1961 and order u/s 154 of the Act is passed accordingly.”

3.2 In first appeal, the Id. CIT(A) has upheld the order of the AO by observing as under:-

“7. Decision:

7.1 The present appeal of the appellant is filed against order passed u/s. 154 of the I. T. Act dated 19.08.2021 The ground of appeal relate to addition of Rs.5,41,052/- to income from Capital Gains added in the rectification order passed u/s. 154 of the IT Act Brief facts of the case as evident from order u/s. 154 dated 19.08.2021 is that during the relevant previous year the appellant sold 6 plots for total sale consideration of Rs.17.20,000/- and after claiming indexed cost of acquisition of Rs.62,800 indexed cost of construction of Rs.3,11,500/- and deduction u/s. 54B of the I. T. Act of Rs.13,45,700/- declared long term capital gain at NIL in the return of income filed.

7.2 Subsequently it was noted by the AO that the stamp valuation authority have adopted/assess value of the said 6 plots at Rs.19,49,552/- and therefore as per the AO in view of provision u/s. 50C of the I. T. Act this amount was required to be considered to be deemed to be the full value of consideration

received or accrued as a result of transfer for the purpose of section 48 of the I. T. Act. It was also noted by the AO that as per the sale agreement, there was no construction available on these 6 plots and hence indexed cost of construction of Rs.3,11,500/- was also required to be disallowed. The AO therefore propose to rectify the assessment order passed u/s. 143(3) r.w.s. 147 of the I. T. Act dated 05.10.2019.

7.3 In para 3 of order u/s. 154 of the I. T. Act dated 19.08.2021 it is stated by the AO that notice u/s. 154 of the I. T. Act was issued to the appellant on 27.07.2021 offering an opportunity for filing his response on 09.08.2021 asking him to explain as to why indexed cost of construction of Rs.3,11,500/- should not be disallowed and long term capital gains taxed accordingly. The AO stated that neither the appellant nor authorized representative filed any written submission. Accordingly, the AO proceeded to pass the impugned order u/s. 154 dated 19.08.2021 thereby disallowing the appellant's claim of indexed cost of construction of Rs.3,11,500/- and difference in sales consideration declared by the appellant and as per provision 50C of the I. T. Act of an amount of Rs. 2,29,552/- totaling to Rs.5,4,1052/- on account of long term capital gains.

7.4 It is seen from the appellant's written submission that the appellant has not made any submission on the issue of adopting the value of sales consideration received/accrued determined by the Stamp Valuation Authority amounting to Rs.19,49,552/-. Therefore it is apparent that the appellant has no objection for considering this value as deemed consideration for the purpose of computation of Long Term Capital Gain

7.5 With regard to the claim of indexed cost of construction it is stated by the appellant that in the year of sale-1e, FY 2011-12 he had not made any construction but incurred the cost of improvement on those plots and the cost incurred of Rs. 3,11,500/ was the cost of improvement and not cost of construction which include cost of foundation expense, land-leveling expense, fencing expense, etc. The appellant however have not provided any documentary evidences in support of

such cost of construction or cost of improvement incurred on the said plots either before the AO or during the course of appellate proceedings. Therefore in the absence of any authentic documentary evidences like copies of bills, vouchers, agreements, bank statement evidencing payment of expenses incurred, etc., appellant's claim that cost of construction or improvement having been incurred on the said plot of land is not acceptable. The action of the AO on this account is therefore upheld.

7.6 In view of the above, there do not appear any mistake in the order passed u/s. 154 of the I. T. Act 19.08.2021.

7.7 In the written submission, it is contended by the appellant that the deduction claimed under section 54B of the I. T. Act was restricted to the Long Term Capital Gains of Rs.13,45,700/- though the agricultural land purchased was of the value of Rs.14,77,170/-. The appellant therefore alleged that differential amount of Rs.1,31,470/- (14,77,170-13,45,700) is the amount of deduction which was not claimed due to limitation of deduction allowed upto lower of capital gains accrued or purchase value of new agricultural land. In support, the appellant have filed the copy of registered agreement deed in respect of purchase of agricultural land. The appellant therefore requested to enhance deduction u/s. 54B accordingly to the enhanced capital gains.

7.8 On perusal of purchase deed for agricultural land it is noted that the total cost including cost of stamp duty and registration incurred by the appellant is at Rs.77,170/- Considering these facts of the case and in law, the disallowance of appellant's claim of expenses incurred on construction/improvement of Rs.3,11,500/- for the purpose of computation of long term capital gains made by the AO is upheld. The AO is directed to re-compute long term capital gains accordingly allowing appellant's claim of deduction u/s, 54B of Rs.14,77,170/-‘

3.3 During the course of hearing, the ld. AR of the assessee prayed that the ld. CIT(A) and the AO have passed the ex-parte order and the assessee was not provided adequate opportunity of being heard. Thus the assessee may be provided one more opportunity to advance his arguments/ submissions before the AO in the interest of equity and justice.

3.4 On the other hand, the ld. DR supported the orders of the lower authorities praying that the assessee was provided various opportunities by the lower authorities to argue the case but the assessee was lethargic and unserious to pursue his case and thus the order passed by the ld. CIT(A) should be sustained.

3.5 We have heard both the parties and perused the materials available on record. The Bench observed that the assessee was really lethargic and unserious in pursuing his case in spite of providing various opportunities by the ld. CIT(A) and the AO as mentioned in their orders. The relevant observation of the ld. CIT(A) for not providing documentary evidence by the assessee is as under:-

“The appellant however have not provided any documentary evidences in support of such cost of construction or cost of improvement incurred on the said plots either before the AO or during the course of appellate proceedings. Therefore in the absence of any authentic documentary evidences like copies of bills, vouchers, agreements, bank statement evidencing payment of expenses incurred, etc., appellant's claim that cost of construction or improvement having been incurred on the said plot of land is not acceptable. The action of the AO on this account is therefore upheld.”

It is undisputed fact that the assessee was granted several authorities either by the ld. CIT(A) or by the AO to argue the case but the assessee remained non-cooperative and negligent in pursuing his case on the dates of hearing of the appeal before the lower authorities. However, the Bench feels that the assessee because of any reasons could not advance his arguments / submissions to contest the case before the lower authorities and the ld. AR of the assessee also prayed to give one more opportunity to submit the evidences concerning the issue in question. In this view of the matter, the appeal of the assessee is restored to the file of the AO, with the additional grounds so raised by the assessee, to decide it afresh by providing one more opportunity of hearing, however, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of assessment proceedings before the AO. Thus the appeal of the assessee is allowed for statistical purposes.

3.6 Before parting, we may make it clear that our decision to restore the matter back to the file of the A.O. shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by A.O. independently in accordance with law.

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

Order pronounced in the open court on 28/06/2023.

Sd-

(राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखासदस्य / Accountant Member

Sd/-

(संदीप गोसाई)  
(Sandeep Gosain)  
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 28 /06/2023

**\*Mishra**

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Mohammad Siraj, Jhunjhunu
2. प्रत्यर्थी / The Respondent- The ITO, Ward 1, Jhunjhunu
3. आयकरआयुक्त / The Id CIT
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No.109/JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar