IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "C", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,

AND

SHRI YOGESH KUMAR US, JUDICIAL MEMBER

| | | |
|---|---|---|
| | ITA NO. 2213/Del/2023 | |
| | A.YR. : 2010-11 | |
| SMT. KANTA<br>PROP. KANTA BRICK KILN CO.,<br>VPO KAYLA BHIWANI,<br>HARYANA – 127021<br>(PAN: CEPPK1186J) | VS. | INCOME TAX OFFICER,<br>WARD-1,<br>BHIWANI |
| **(APPELLANT)** | | **(RESPONDENT)** |

Appellant by : Ms. Rano Jain, Adv.
Respondent by : Dr. Ranjit Kaur, Sr. DR.

Date of hearing : 09.04.2024
Date of pronouncement : 16.04.2024

**ORDER**

**PER SHAMIM YAHYA, AM :**

The Assessee has filed the present Appeal against the Order of the Ld. CIT(A), NFAC, Delhi dated 05.06.2023 passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred as Act), relating to assessment year 2010-11 on the following grounds:-

1. On the facts and circumstances of the case, the order passed by the Ld. CIT(A), confirming the order passed by Assessing Officer under section 154, is bad both in the eye of law and on facts.
2. (i) On the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in confirming the order under section 154 of the Act, ignoring the fact that the issue in question is not a mistake apparent from record, hence, not rectifiable under section 154 of the Act.
(ii) That the Assessing Officer has attempted to review his own order passed under section 143(3) of the Act, which is not permissible under section 154 of the Act.
(iii) That an issue which can be resolved through a long drawn process cannot be said to be a mistake apparent from record.
3. On the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in confirming the addition u/s. 68 of the Act, despite the assessee having explained the source of investment with proper documentary evidences.
4. That the appellant craves leave to add, amend or alter any of the grounds of appeal.

2. Briefly put, the relevant facts are that as per the information available with the Department, the assessee had made investment of Rs. 68,63,000/-, expenses on registration of Rs. 15,000/- and stamp duty of Rs. 2,05,900/- totaling Rs. 70,83,900/- on 19.02.2010 for the year under consideration. It was noticed by the AO that though the assessee had made investment of Rs. 70,83,900/- for the year under consideration but the assessee failed to file her return of income u/s 139(1) of the Act. Subsequently, a notice u/s 148 of the Act was issued on 27.03.2017 and served upon the assessee. The assessee filed a copy of return of income on 08.08.2017 declaring total income NIL. The assessee at the time of assessment proceeding, intimated that the amount of Rs. 70,83,900/- was generated by her late husband Sh. Arjun Singh as advance money taken by him from his relatives at the time of sale of agricultural land.

Accordingly, AO completed the assessment proceedings u/s 147 r.w.s 143(3) of the Act vide his order dated 03.10.2017 accepting the income returned at Nil by observing as under : -

> *"Statutory notices under section 143(2) and 142(1) dated 09.08.2017 alongwith detailed questionnaire were issued for 11.08.2017 requiring the assessee to furnish the necessary evidence of sources of investment, which have been complied with by the assessee and his counsel Shri ML Kataria, Advocate and Shri Umed Singh, son of the assessee. Necessary information, bank statements have been furnished and examined. After examination of relevant information, and discussion made with the Counsel for the assessee, the assessment has been completed and returned income has been accepted as assessed."*

3. After the completion of assessment, the AO observed that following mistakes apparent from the assessment order dated 03.10.2017 needed to be rectified u/s 154.

> *"The case was opened to check the source of investment of Rs. 70,83,900/- (Rs. 6863000 price of land Rs. 20,5900 stamp duty and Rs. 15000 registration fees) for the purchase of property vide purchase of deed no. 8637 dated 19.2.2010 in the name of assessee named Shri Arjun Singh who died later on dated 17.9.2013. The assessee (wife of Shri Arjun Singh) filed ITR declaring nil income on dated 08.8.2017. The assessee replied that she generated the said funds by taking advance money from my relatives at the time of sale of agriculture land. Here it has been observed that actual position regarding source of investment was as under:-*

| ***Particulars of agri land*** | ***Sale Deed no. & date*** | ***Total amount of land (Rs. P)*** | ***Shares of assessee in land (Rs.)*** | ***Remarks*** | ***Advance taken as per reply (Rs.)*** |
|---|---|---|---|---|---|
| *3 acre* | *8534/16-02-10* | *19,80,000* | *19,80,000* | *Share was of children* | *19,80,000* |
| *4 acre* | *143/7-5-2010* | *38,00,000* | *09,50,000* | *1/4th share* | *20,00,000* |
| *1 acre 4* | *144/7-5-* | *70,00,000* | *17,50,000* | *1/4th share* | *20,00,000* |

| | | | | | |
|---|---|---|---|---|---|
| *kaal* | *2010* | | | | |
| *7 acre 3 kanal* | *142/7-5-2010* | *70,00,000* | *17,50,000* | *1/4th share* | *10,00,000* |
| | | | | *From House saving* | *103900* |
| | | | | *Total* | *70,83,900* |

*From the above table, it is clear that purchase deed was made on dated 19.2.2010 and sufficient funds should be available before making such purchase deed. Total funds of Rs. 20,83,000 (Rs. 19,80,000 from sale of land on 16.2.2010 being share of his children) and Rs. 10,03,900 from house saving) was available for investment in the purchase of land on 19.2.2010. Other sale deed were made after purchase of land and therefore this is not possible to divert the amount of sale deed executed later on for purchase of land executed earlier. Further, neither ikarnama (agreements) in support of taking advance amount on account of sale of land on those respective dates were available nor such fact regarding payment of advance amount and balance amount paid at the time of execution of sale deed was mentioned in the document. In the absence of which complete source of investment for purchase of said property cannot be justified. Due to undisclosed source of investment of Rs. 50,00,000/- (Rs. 70,83,900 – Rs. 20,83,900) available at time of purchase of land) it should be added in the returned of the assessee.*

| | |
|---|---|
| *Unexplained source of income* | *Rs. 50,00,000/-* |
| *Tax including Cess* | *Rs. 144120/-* |
| *Interest u/s. 234A for 85 months from 08/10 to 10/18* | *Rs. 14461x1% = 1229185* |
| *Interest u/s 234B for 93 months from 4/11 to 12/18* | *Rs. 14461X1% = 1315951* |
| *Tax effect* | *Rs. 1446120+1229185+1315951 = 3991256/-* |

*In order to rectify the aforesaid mistakes an opportunity was provided to the assessee and notice was issued to the assessee on 11.03.2021 for 17.03.2021. On date*

*fixed there was no compliance. Another opportunity was provided with an issue of notice u/s. 154 on 07.04.2021 for 15.04.2021. But no explanation was offered by the assessee despite being provided these opportunities. Thus, the AO passed the rectification order on 14.07.2021 with addition of Rs. 50,00.000/- u/s 68 of the Act being unexplained source of income."*

4. Aggrieved, the assessee is in appeal before the Tribunal and all grounds related thereto.

5. At the time of hearing, Ld. AR has submitted that in an order under section 143(3), which was reopened for the purpose of investment of Rs. 70,83,900/- in a property in the year consideration. She further submitted that the AO in his order dated 03.10.2017, after considering all the documentary evidences and personal appearances on behalf of the assessee preferred not to draw any adverse inference against the assessee. She further submitted that after conclusion of assessment, AO issued a notice under section 154 of the Act to the assessee stating that since the investment in the property was not properly explained by the assessee during the year under consideration, there is a mistake apparent from record reviewable under section 154 of the Act. An addition of Rs.50,00,000/- was made by AO in his order dated 14.07.2021 and in appellate proceedings the Ld. CIT(A) dismissed the appeal of the assessee. It was the further contention of the Ld. AR that from the records it transpires that the source of the investment which was accepted by AO in his original assessment order cannot be revised in an order under section 154 of the Act as it cannot be said to be a mistake apparent from record. It is a clear case of review of the order by AO which is not permitted under the law. On the same set of facts and evidences AO wants to change his view in the guise of rectification of mistake under section 154 of the Act. She further submitted that it is a settled law that a mistake which can be established only with a long-drawn process of reasoning cannot be a mistake apparent from record. To support her aforesaid contention,

she relied upon the judgement of the Hon'ble Supreme Court reported in (1971) 82 ITR 50 (SC) as T.S. Balaram, ITO vs. Volkart Brothers dated 05.08.1971. In view of the aforesaid, Ld. AR has submitted that the order passed u/s. 154 of the Act dated 14.07.2021 passed by the Assessing Officer is not sustainable in the eyes of law, hence, the same may be quashed.

6. Ld. Sr. (DR) supported the order of the Ld. CIT(A).

7. We have heard the rival contentions and perused the material available on record and also gone through the orders of the authorities below.

7.1 After going through the records, we find that it is not in dispute that as per the information available with the Department, the assessee had made investment of Rs. 68,63,000/-, expenses on registration of Rs. 15,000/- and stamp duty of Rs. 2,05,900/- totaling Rs. 70,83,900/- on 19.02.2010 for the year under consideration. It is also not in dispute that the assessee at the time of assessment proceeding, intimated that the amount of Rs. 70,83,900/- was generated by her late husband Sh. Arjun Singh as advance money taken by him from his relatives at the time of sale of agricultural land. Accordingly, AO completed the assessment proceedings u/s 147 r.w.s 143(3) of the Act vide his order dated 03.10.2017 accepting the income returned as assessed by observing that *"Statutory notices under section 143(2) and 142(1) dated 09.08.2017 alongwith detailed questionnaire were issued for 11.08.2017 requiring the assessee to furnish the necessary evidence of sources of investment, which have been complied with by the assessee and his counsel Shri ML Kataria, Advocate and Shri Umed Singh, son of the assessee. Necessary information, bank statements have been furnished and examined. After examination of relevant information, and discussion made with the Counsel for the assessee, the assessment has been completed and returned income has been accepted as assessed."* The aforesaid finding of the AO was concluded after considering all

the documentary evidences and personal appearances on behalf of the assessee preferred not to draw any adverse inference against the assessee. However, after conclusion of assessment, AO issued a notice under section 154 of the Act to the assessee stating that since the investment in the property was not properly explained by the assessee during the year under consideration, there is a mistake apparent from record rectifiable under section 154 of the Act and made the addition of Rs.50,00,000/- vide his order dated 14.07.2021 and in appellate proceedings the ld. CIT(A) also dismissed the appeal of the assessee. As per well established law it is not in dispute that the source of the investment which was accepted by AO in his original assessment order cannot be revised in an order under section 154 of the Act as it cannot be said to be a mistake apparent from record. We find that AO wants to change his view in the garb of rectification of mistake under section 154 of the Act, which is not permissible under the law. We find that the impugned order of the AO was passed u/s 154 of the IT Act and Section 154 of the IT Act mandates rectification of mistake apparent from record. The Hon'ble Apex Court in the case of ITO vs. Volkart Brothers and others reported in 82 ITR 50 has held that "a mistake apparent on record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning, on points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from the record."

7.2 Thus, respectfully following the aforesaid binding principle rendered in ITO vs. Volkart Brothers (Supra), we hold that the impugned order passed u/s. 154 of the Act dated 14.07.2021 of the Assessing Officer is invalid and liable to be quashed, in view of the aforesaid facts and circumstances of the case. Accordingly, we set aside the orders of the authorities below and quash the impugned assessment order dated 14.7.2021.

8. In the result, appeal of the assessee is allowed in the aforesaid manner.

Order pronounced on 16/04/2024.

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **(YOGESH KUMAR US)** | **(SHAMIM YAHYA)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

**SR Bhatnagar**

**Copy forwarded to:-**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar