

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT  
AND  
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.894/PUN/2023  
निर्धारण वर्ष / Assessment Year: 2014-15

ITO, Ward-14(3), Pune.	Vs.	Gopal Janardan Tambe, 1, Goph, Sr. No.249, D. P. Road, Aundh, Pune- 411004. PAN : AAKPT4109M
Appellant		Respondent

Revenue by : Shri Ramnath P. Murkunde  
Assessee by : Shri Sarvesh Khandelwal  
Date of hearing : 18.04.2024  
Date of pronouncement : 07.05.2024

**आदेश / ORDER**

**PER VINAY BHAMORE, JM:**

This appeal filed by the Revenue is directed against the order dated 05.07.2023 passed by LD CIT(A)/NFAC, Delhi for the assessment year 2014-15.

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

*"1. On the facts and circumstances the CIT (A), NFAC has erred in passing the order both on law and facts of the case.*

*2. On the facts and circumstances the CIT (A), NFAC has erred in allowing the appeal in favour of assessee stating that the issue of deeming provisions u/s 56(2)(vii)(b) of the Act does not find any place in the assessment order and there cannot be any rectification to the*

*assessment order passed u/s 143(3) of the Act on the debatable issue or where there is change of opinion.*

*3. On the facts and circumstances the CIT(A) did not properly evaluate the nature of the transaction and the genuineness of the claim of exemption made by the assessee u/s 56(2)(vii)(b) of the Act.*

*4. The CIT(A) erred in not considering the relevant judicial precedents and applicable provisions of the Income Tax Act in determining the taxability u/s 56(2)(vii)(b) of the Act.*

*5. The appellant craves to leave, add, amend or alter any of the grounds of appeal.”*

3. The facts, in brief, are that the appellant filed his return of income on 31.07.2014 declaring total income of Rs.4,58,666/-. The case was selected under limited scrutiny for verification of investments in agricultural land i.e. movable property. The assessment was completed by the Assessing Officer u/s 143(3) of the I.T. Act on 30.12.2016 accepting the returned income. Later on, the Assessing Officer noticed that the appellant has purchased agricultural lands for a consideration of Rs.43,33,000/-. However, the stamp duty value for the purpose of registration of the said agricultural lands was Rs.5,75,15,000/-. Accordingly, the Assessing Officer issued notice u/s 154 on 19.02.2019 invoking the provisions of section 56(2)(vii)(b) of the Act. Subsequently, the Assessing Officer passed a rectification order u/s 154 wherein he assessed income at Rs.5,36,43,666/- by making addition of

Rs.5,31,85,000/- as 'income from other sources' being the difference between the sale consideration and the stamp duty valuation u/s 56(2)(vii)(b) of the Act.

4. Being aggrieved with the order passed by the Assessing Officer u/s 154, the appellant preferred an appeal before Id. CIT(A)/NFAC, who vide impugned order dated 05.07.2023 allowed the appeal of the assessee by observing as under :-

*“6. During the course of appellate proceedings, the appellant has made the following submission –*

*The proposed notice to rectify the assessment u/s 154 is with reference to application of Sec. 56 (2)(vii)(b). This section in its proviso refers to the provisions of Sec. 50C of the income tax Act & also specifies that the provisions of Section 50C are applicable in similar fashion to sec. 56(2)(vii)(b) of the income tax Act, in as much as the referring the matter to valuation officer. The relevant provisions reads as under -*

*“Provided that where the stamp duty value of immovable property as referred to in sub clause (b) is disputed by the assessee on grounds mentioned in sub- section (2) of section 50C , the assessing officer may refer the valuation of such property to the valuation officer , and the provisions of section 50C & sub section (15) of section 155 shall as far as may be apply in relation to the stamp duty value of such property for the purpose of sub - clause (b) as they may apply for valuation of capital asset under those section. ”*

*The submission dt. 04/01/2022 which is already on the record will leave no doubt that the adoption of ready reckoner value in place of agreement value is not acceptable to me & therefore it was mandatory to refer the matter to valuation officer.*

*With reference to the above preposition of the law there has been failure on the part of assessing officer to refer the matter to the valuation officer before the value of ready reckoner is being replaced to the agreement value. This renders the proceedings initiated u/s 56(2)(vii)(b) renders the proceedings unlawful & null & void. Moreover whether such reference to*

*the valuation to the officer should have been or must have been done is itself highly debatable issue & therefore same cannot be coming within the domain of provisions of Sec. 154.*

*Vide para no. 1.3 of our submission dt. 04/01/2022 also has brought out the fact that query pertaining to application of provisions of Sec. 56(2)(vii)(b) was duly raised & inquired during the process of original assessment & after considering all the documentary evidence & the provisions of the Act the conscious call was taken by then assessing officer & assessment was completed accepting the returned income. Invocation of provisions of Sec. 154 does not give jurisdiction to the assessing officer to amend the assessment order merely on the change of opinion. On this ground also order passed u/s 154 is not sustainable in the eyes of law & the same be cancelled.*

7. *This case was first assessed u/s 143(3) of the Act which was selected for limited scrutiny for verification of investments made in agricultural lands i.e. immovable properties. During the course assessment proceedings, the AO has made enquiries on the issue and thereafter accepted the returned income of the assessee. The AO further found that there is variation in the sale of consideration and the stamp duty valuation of the immovable properties purchased. Accordingly, the AO passed rectification order u/s 154 of the Act bringing the difference between the sale of consideration and the stamp duty valuation to tax by invoking the provisions of section 56(2)(vii)(b) of the Act on the ground that there were no sufficient evidences to prove the land purchased to be an agricultural land.*

8. *The appellant has contended that in case there was some issue regarding the stamp duty valuation, the AO should have referred the matter to the DVO which the AO failed to do as the stamp duty valuation was not acceptable to the appellant. Thus, the appellant has claimed that the issue is debatable and the same cannot be brought within the domain of provisions of Sec. 154 of the Act. It has further stated that invocation of provisions of Sec. 154 does not give jurisdiction to the assessing officer to amend the assessment order merely on the change of opinion. On this ground also order passed u/s 154 is not sustainable in the eyes of law & the same be cancelled.*

9. *I have considered the assessment order, rectification order and the submissions made by the appellant. The issue of deeming provisions u/s 56(2)(vii)(b) of the Act does not find any place in the assessment order. One cannot understand as to how it has become mistake and resultantly mistake apparent from record. The AO cannot improve his assessment order by way of rectification. Now, the issue is whether, the AO can bring such deeming income to tax in the proceedings u/s 154 of the Act which was not at all discussed in the*

*assessment order. The issue of stamp valuation is debatable one. Similarly, there is change of opinion on the issue of invoking provisions of section 56(2)(vii)(b) of the Act. There cannot be any rectification to the assessment order passed u/s 143(3) of the Act on the debatable issue or where there is change of opinion. Thus, the AO's action cannot be upheld and therefore, the order u/s 154 passed by the AO is hereby quashed."*

5. It is against this order dated 05.07.2023 passed by LD CIT(A)/NFAC the Revenue is in appeal before us.

6. Learned Sr. DR vehemently supported the order passed by the AO & requested to set-a-side the order passed by LD CIT(A)/NFAC.

7. On the other hand, LD AR supported the order passed by LD CIT(A)/NFAC & submitted that there was no mistake apparent from the records as contemplated u/s 154 of the IT Act in regard to applicability of provisions of section 56(2)(vii)(b) of the IT Act as the case was selected for limited scrutiny on this issue only & a specific query was raised by the then AO on the issue of applicability of section 56(2)(vii)(b) of the IT Act to the transaction of purchase of rural agricultural land & after considering the detailed reply of the assessee, the then AO was satisfied that the provision of section 56(2)(vii)(b) were not applicable to the transaction of rural agricultural land and the said

satisfaction was based upon the documentary evidence furnished during the course of the original assessment proceedings & therefore there is no mistake of overlooking the provision of section 56(2)(vii)(b) of the IT Act. It was further submitted that this tantamount to change of opinion on same set of facts & the issue of stamp duty valuation is debatable one. It was also submitted that there cannot be any rectification u/s 154 of the IT Act to the assessment order passed u/s 143(3) of the IT Act on the debatable issues or where there is change of opinion. The ld. counsel for the assessee also relied on following decisions :-

- (i) ITO vs. Volkart Brothers, 82 ITR 50 (SC).
- (ii) Mubarak Gafur Korabu vs. ITO, 117 taxmann.com 828 (Pune – Trib.)
- (iii) Blue Star Engineering Co. (Bombay) (P.) Ltd. vs. CIT, 73 ITR 283 (Bombay).
- (iv) CIT vs. S. S. Gupta, 257 ITR 440 (Rajasthan).

8. We have heard learned counsels from both the sides & perused the material available on record. We find that the case of the respondent assessee was selected for limited scrutiny for verification of investments made in agricultural lands i.e. movable properties. After detailed scrutiny an assessment order u/s 143(3) of the IT Act was passed accepting the returned income. Later the

case was reopened u/s 154 of the IT Act for applying the provisions of section 56(2)(vii)(b) of the IT Act on the transaction of purchase of immovable property by the assessee, as the stamp duty value for the purposes of registration was more than the value of actual consideration paid by the assessee. It is the submission of ld. Counsel for the assessee that this is a change of opinion on a concluded issue & therefore the proceedings u/s 154 of the IT Act are bad in law. We find LD CIT(A)/NFAC has also held that the issue of stamp duty valuation is debatable one & there is a change of opinion hence the action of the AO cannot be upheld & therefore the order passed u/s 154 of the IT Act has been quashed. It is the settled proposition of law that an error which has to be established by a long drawn process of reasoning on points where there may conceivably be two options cannot be said to be an error apparent on the face of the record. A decision on a debatable point of law is not a mistake apparent from the record. In view of the above discussion and in view of the detailed reasoning given by the ld. CIT(A)/NFAC on this issue, we do not find any infirmity in the order passed by LD CIT(A)/NFAC, and therefore we confirm

the order passed by LD CIT(A)/NFAC. Consequently the grounds raised in the appeal filed by the Revenue are dismissed.

9. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 07<sup>th</sup> May, 2024.

Sd/-  
**(R. K. PANDA)**  
**VICE PRESIDENT**

Sd/-  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 07<sup>th</sup> May, 2024.

*Sujeet*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.