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

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER

ITA No.1120/PUN/2023
Assessment Year : 2015-16

ITO, Ward – 2(2), Pune	**Vs.**	Imperial Housing Plot No.15, 17, 19, B12, Paradigm Opal Balewadi, Pune – 411045
		PAN: AADFI3770N
(Appellant)		**(Respondent)**

ITA No.1792/PUN/2024
Assessment Year : 2015-16

Imperial Housing Plot No.15, 17, 19, B12, Paradigm Opal Balewadi, Pune – 411045	**Vs.**	ITO, Ward – 2(2), Pune
PAN: AADFI3770N		
(Appellant)		**(Respondent)**

Assessee by	**:**	Shri Kishor B Phadke
Department by	**:**	Shri Ramnath P Murkunde
Date of hearing	**:**	25-09-2024
Date of pronouncement	**:**	25-10-2024

O R D E R

PER R.K. PANDA, VP :

These are cross appeals, the first one is filed by the Revenue and the second one filed by the assessee are directed against the order dated 28.08.2023 of the CIT(A)/ NFAC, Delhi relating to assessment year 2015-16.

2. There is a delay of 306 days in filing of the appeal by the assessee before the Tribunal, for which the assessee has filed a condonation application along with an affidavit explaining the reasons for such delay. After considering the contents of the condonation application filed along with the affidavit and after hearing the Ld. DR, the delay in filing of the appeal is condoned and the appeal is admitted for adjudication.

3. Facts of the case in brief, are that the assessee is a firm engaged in the business of developing properties. It filed its return of income on 21.09.2015 declaring total income of Rs.8,46,600/-. The case of the assessee was selected through CASS for limited scrutiny for verification of the following issues:

(a) Interest expenses

(b) Unsecured loans

4. Accordingly, statutory notice u/s 142(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was issued and served on the assessee, in response to which the assessee filed the requisite details. The Assessing Officer completed the assessment on 27.12.2017 by accepting the returned income.

5. Subsequently, the Assessing Officer noticed that under the head 'Preliminary Expenses' the assessee had claimed deduction of Rs.3,44,38,300/- which was allowed in full in the assessment order. According to the Assessing

Officer, the same should have been allowed @ 20% as per provisions of section 35D of the Act. Accordingly, he issued a notice u/s 154 of the Act. Rejecting the various explanations given by the assessee, the Assessing Officer made addition of Rs.2,75,50,640/- to the total income of the assessee by observing as under:

"ORDER U/S 154 OF THE INCOME TAX ACT 1961

It has been come to the notice of the undersigned that while passing the order u/s 143(3) of the IT. Act, 1961, for the AY 2015-16 on 27/12/2017, there was a mistake apparent from record. The assessee had claimed Rs.3,44,38,300/- towards preliminary expenses written off as against the sales revenue of Rs.1,01,91,860/- and closing stock of Rs.3,78,11,338/-. However as per the provisions of section 35D of the Act, the assessee was eligible to claim one fifth of the project cost i.e. Rs.68,87,660/-. Non restriction of claim has resulted in excess allowance of deduction of Rs.2,75,50,640/- (3,44,38,300- 68,87,660/-).

2. Since it was mistake apparent from the records, notice u/s 154 dated 02/04/2019 was issued calling for the explanation if any in the matter by 15/04/2019. However, the assessee has neither attended nor submitted any written submission in the matter till date. It is therefore, construed that the assessee has nothing to say in the matter.

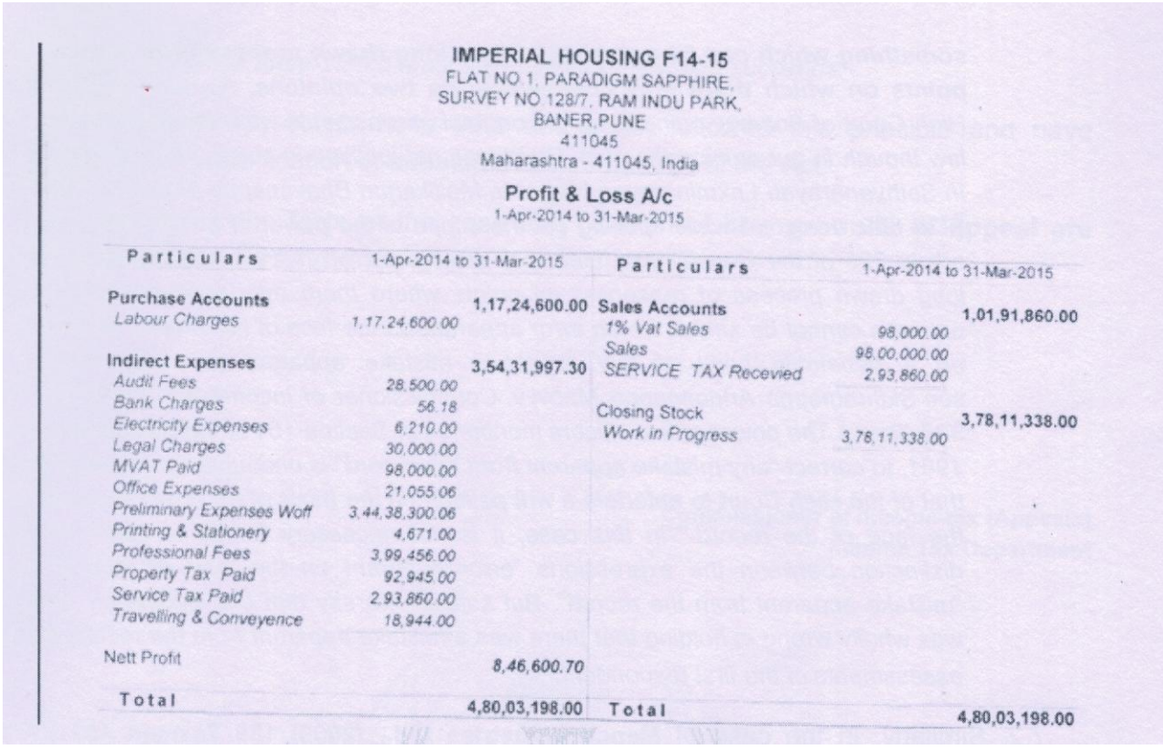
3 Order u/s 154 is therefore, passed and excess claim of Rs.2,75,50,640/- is disallowed and added to the total income of the assessee for AY 2015-16 as under:

Assessed income	*Rs 8,46,601/-*
Expenses disallowed and added	*Rs. 2,75,50,640/-*
Tax and interest now payable	*Rs.1,42,01,030/-*

4. Order u/s 143(3) passed on 27/12/2017 is rectified u/s 154 of the I.T. Act, 1961. Issue DN/Challan accordingly.

6. In appeal, the Ld. CIT(A) / NFAC deleted the addition by observing as under:

"6. I have carefully considered the case and have gone through the records. The appellant has submitted a copy of its accounts, which is as follows:



IMPERIAL HOUSING F14-15
FLAT NO.1, PARADIGM SAPPHIRE,
SURVEY NO.128/7, RAM INDU PARK,
BANER,PUNE
411045
Maharashtra - 411045, India

Profit & Loss A/c
1-Apr-2014 to 31-Mar-2015

Particulars	1-Apr-2014 to 31-Mar-2015		Particulars	1-Apr-2014 to 31-Mar-2015	
Purchase Accounts		1,17,24,600.00	**Sales Accounts**		1,01,91,860.00
Labour Charges	1,17,24,600.00		*1% Vat Sales*	98,000.00	
			Sales	98,00,000.00	
Indirect Expenses		3,54,31,997.30	*SERVICE TAX Recevied*	2,93,860.00	
Audit Fees	28,500.00				
Bank Charges	56.18		Closing Stock		3,78,11,338.00
Electricity Expenses	6,210.00		*Work in Progress*	3,78,11,338.00	
Legal Charges	30,000.00				
MVAT Paid	98,000.00				
Office Expenses	21,055.06				
Preliminary Expenses Woff	3,44,38,300.06				
Printing & Stationery	4,671.00				
Professional Fees	3,99,456.00				
Property Tax Paid	92,945.00				
Service Tax Paid	2,93,860.00				
Travelling & Conveyence	18,944.00				
Nett Profit		8,46,600.70			
Total		4,80,03,198.00	**Total**		4,80,03,198.00

7. It appears that there was indeed a technical mistake in treatment and nomenclature, but the moot point raised here, by the appellant, is whether such mistake could be set right u/s 154 of the Act or not. Now, Sub-section (1) of section 154 of the Act says that with a view to rectify any mistake apparent from the record, an Income-tax authority may do any one of the acts as mentioned in Clauses (a) to (d) of section 154(1) of the Act. The other sub-sections deal with matters where the issue has been considered and decided in a proceeding by way of an appeal or revision relating to the orders referred in sub-section (1) of section 154 of the Act. Thus, the Section empowers the authority only to rectify apparent mistakes by amending an order passed by it or amending any intimation or deemed intimation under sub-section (1) of section 154 of the Act.

7.1. At this juncture, it will be beneficial to refer to the decision of the Hon'ble Supreme Court in the case of TS. Balaram, ITO v. Volkart Brothers [1971] 82 ITR 50 wherein the Hon'ble Supreme Court has held as follows

> *"From what has been said above, it is clear that the question whether section 17(1) of the Indian Income-tax Act, 1922, was applicable to the case of the first respondent is not free from doubt. Therefore, the Income-tax Officer was not justified in thinking that on that question there can be no two opinions. It was not open to the Income-tax Officer to go into the true scope of the relevant provisions of the Act in a proceeding under section 154 of the Income-tax Act, 1961. A mistake apparent on the 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 conceivably be two opinions As seen earlier, the High Court of Bombay opined that the original assessments were in accordance with law though in our opinion the High Court was not justified in going into that question In Sathyanarayan Laxminarayan Hegde v Mallikarjun Bhavanappa Tirumale [1950] 1 SCR 890, this court while spelling out the scope of the power of a High Court under article 226 of the Constitution ruled that an error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions 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 - see Sidhramappa Andannappa Manvi v. Commissioner of Income-tax [1952] 21 ITR 333 (Bom) The power of the officers mentioned in Section 154 of the Income-tax Act, 1961, to correct "any mistake apparent from the record" is undoubtedly not more than that of the High Court to entertain a writ petition on the basis of an "error apparent on the face of the record In this case, it is not necessary for us to spell out the distinction between the expressions "error apparent on the face of record" and "mistake apparent from the record But suffice it to say that the Income-tax Officer was wholly wrong in holding that there was a mistake apparent from the record of the assessments of the first respondent."

7.2. Similarly, in the case of Mepco Industries Ltd., [2009] 185 Taxman 409 (SC), Hon'ble Apex court observed,

"8. We may now deal with the judgment of the Calcutta High Court in the case of Jiyajeerao Cotton Mills Ltd. v. ITO (1981) 130 ITR 710. In that case, the appellant- assessee derived profits from three industries, one of which qualified for special rebate under Part-I of Schedule-1-to the Finance Act, 1965, for the assessment year 1966-67. In granting this special rebate, the Income-tax Officer computed the profits attributable to that industry without deducting development rebate granted to the appellant. The Income-tax Officer sought to rectify the mistake under section 154 of the Act by recomputing the profits by deducting the development rebate. The appellant filed a writ petition for setting aside the notice of rectification. It was held by the Calcutta High Court that since there was conflict of opinion on computation of profits of priority industry for granting tax relief which conflict was resolved by the Supreme Court later on for the subsequent assessment year 1967-68, such subsequent decision of the Supreme Court did not obliterate the conflict of opinion prior to it. It was held that, under section 154 of the Act, rectification was not permissible on debatable issue.

……..

11. To the same effect is the judgment of this Court in the case of CCE v. A.S.C.U. Ltd. 2003 (151) ELT 481, wherein it has been held that a 'rectifiable mistake' is a mistake which is obvious and not

something which has to be established by a long drawn process of reasoning or where two opinions are possible. Decision on debatable point of law cannot be treated as "mistake apparent from the record".

12. For the afore-stated reasons, appellant-assessee succeeds

7.3. Various high courts have time and again followed this principle and have quashed any ramification of debatable nature u/s 154 of the Act.

8. Considering the facts of the case and position of law, grounds of appeal are decided in favour of the appellant."

7. Aggrieved with such order of CIT(A) / NFAC, the Revenue is in appeal before the Tribunal by raising the following grounds:

1. On the basis of facts and circumstances of the case and in law. Ld CIT(A) erred in holding that the issue subjected to rectification u/s 154 was debatable and could not legally be treated as a mistake apparent from record, without appreciating the fact that in the assessment order the preliminary expenses of Rs.3,44,38,300/- declared by the assessee in its ITR and accepted as such in the assessment proceedings, had been allowed in full rather than at the allowable rate of 20% as per the provisions of section 35D of the Income Tax Act, 1961.

2 On the basis of facts and circumstances of the case and in law, Ld CIT(A) failed to observe the fact that the nature of the expenses in question has been declared in the audited P&L account as well as in the return of income as Preliminary expenses and also assessed as such by the Assessing Officer.

3 On the basis of facts and circumstances of the case and in law, Ld CIT(A) erred in admitting additional evidences in the form of "Copy of Index Il for purchase of plot and "commencement certificate in violation of the provisions of Rule 46A of the Income Tax Rules 1962.

4 The appellant craves leave to add or to amend or alter any or all of the grounds of appeal, if deemed necessary.

8. The assessee has also filed the appeal before the Tribunal by raising the following grounds:

1. *Appellant contends that, since appellant's 'Return of Income' was selected for "Limited Scrutiny"; addition of Rs.2,75,50,640/-; relating to alleged preliminary expenses; could not have been made into appellant's total income, since*

   - *Scope of "Limited Scrutiny" was not covered in "Complete Scrutiny"*

   - *No any approval of learned PCIT was availed for extending scope of "Limited Scrutiny"*

2. *The appellant craves leave to add/alter/modify/delete/amend all / any of the grounds of appeal.*

9. The Ld. DR heavily relied on the order of the Assessing Officer and submitted that this is a mistake apparent from the record and therefore, the Assessing Officer was fully justified in making the disallowance of Rs.2,75,50,640/-. So far as the order of the CIT(A) / NFAC holding that the issue is a debatable one and therefore the proceedings u/s 154 of the Act is not justified is concerned, he submitted that as per provisions of section 35D of the Act, the assessee is eligible to claim only 1/5th of the project cost amounting to Rs.68,87,660/- out of the total project cost of Rs.3,44,38,300/-. Therefore, the rectification order of the Assessing Officer should be upheld and the grounds raised by the Revenue should be allowed.

10. The Ld. Counsel for the assessee on the other hand while supporting the order of the CIT(A) quashing the order passed u/s 154 submitted that the case was selected for limited scrutiny and therefore the Assessing Officer could not have

extended the scope of limited scrutiny to complete scrutiny without taking mandatory approval of the PCIT.

11. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Ld. CIT(A) / NFAC and the paper book filed on behalf of the assessee. It is an admitted fact that the case was selected for limited scrutiny under CASS for verification of interest expenses and unsecured loans which is evident from para 2 of the assessment order, which reads as under:

> *"2. The case was selected for Limited Scrutiny under Computer Assisted Selected Scrutiny i.e. CASS for verification of i. Interest expenses ii. Unsecured loans. Notice u/s. 143 (2) was issued by ITO, Wd 7(2), Pune on 27.07.2016 which was served on 06/08/16. Thereafter the case was transferred to ITO, Wd 2(2), Pune over change in jurisdiction."*

12. A perusal of the order sheet entry shows that on 27.12.2017 the assessee has filed a Note on preliminary expenses in Dak of the office of the Assessing Officer which is evident from page 93 of the paper book. A perusal of page 70 of the paper book shows that the assessee vide letter dated 22.12.2017 has filed the details of preliminary expenses which are as under:

"IMPERIAL HOUSING

DETAILS OF PRELIMINARY EXPS:

PARTICULAR	*FY 2011-12*	*2012-13*	*2013-14*	*TOTAL*
PLOT PURCHASE	*21018000*	*0*	*0*	*21018000*
LABOUR CHARGES	*0*	*99000*	*79983*	*178983*
DIRECT & INDIRECT EXPS	*0*	*122798*	*4221878*	*4344676*

INTEREST	*0*	*0*	*8896641*	*8896641*
	21018000	*221798*	*13198502*	*34438300*

13. A perusal of page 93 of the paper book shows the following entry by the Assessing Officer in the order sheet:

> *"27.12.2017 The assessee has filed note of preliminary expenses in dak of this office. Case heard."*

14. Therefore, once the Assessing Officer has asked the details of preliminary expenses and the assessee has filed the details and the Assessing Officer has accepted the same, it is not an apparent mistake and therefore the CIT(A) / NFAC in our opinion was fully justified in holding that a debatable issue cannot be subject matter of rectification u/s 154 of the Act. In this view of the matter, we uphold the order of the CIT(A) / NFAC and the grounds raised by the Revenue are accordingly dismissed.

15. So far as the grounds raised by the assessee are concerned, these relate to the power of the Assessing Officer to travel beyond the reasons for which the case was selected for scrutiny. It is an admitted fact that the case of the assessee was selected for limited scrutiny for two issues, the details of which are already reproduced in the preceding paragraphs. At the same time, it is also an admitted fact that although the Assessing Officer had asked the assessee the details of preliminary expenses, however, he has not made any addition on this issue.

Therefore, in absence of any addition made other than the reasons for which the case was selected for scrutiny, the assessee cannot raise any ground on this issue. Accordingly, the grounds raised by the assessee are dismissed.

16. In the result, the appeal filed by the Revenue as well as the appeal filed by the assessee are dismissed.

Order pronounced in the open Court on 25th October, 2024.

Sd/-	**Sd/-**
(ASTHA CHANDRA)	(R. K. PANDA)
JUDICIAL MEMBER	VICE PRESIDENT

पुणे Pune; दिनांक Dated : 25th October, 2024
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

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

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	21.10.2024		Sr. PS/PS
2	Draft placed before author	22.10.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			