

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.1252/Bang/2024
Assessment year : 2014-15

Shri Vinod Prasad Injeti, 601, C-Block, Pramuk Temple Meadows, No.3, 27 <sup>th</sup> Cross, Banashankari 2 <sup>nd</sup> Stage, Bangalore – 560 070. <b>PAN: AAOPI 4322D</b>	Vs.	The Income Tax Officer, Ward 2(3)(3), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Jyothi Anumolu, Advocate
Respondent by	:	Shri Ganesh R. Gale, Standing Counsel.

Date of hearing	:	13.11.2024
Date of Pronouncement	:	22.11.2024

**ORDER**

*Per Prashant Maharishi, Vice President*

1. This appeal is filed by Mr. Vinod Prasad Injeti (the assessee/appellant) for the assessment year 2014-15 against the appellate order passed by the National Faceless Appeal Centre, Delhi (NFAC) [Id. CIT(A)] dated 22.5.2024 wherein the appeal filed by the assessee against the rectification order u/s. 154 of the Income-tax Act, 1961 (the Act) dated 29.12.2017 passed by ITO, Ward 2(3)(3), Bangalore [Id. AO] was dismissed.

2. The assessee has raised the following grounds:-

“1. The Commissioner of Income Tax (Appeals) ("CIT(A)") has erred in law and fact by not appreciating that the Learned Assessing Officer ("AO") has wrongly assumed jurisdiction and issued an order in contravention of the principles of natural justice.

2. The Learned CIT (A) has proceeded in passing the impugned order on the premise that the *lis* is regarding the 'cost of acquisition', disregarding the fact that the *lis* was never regarding 'cost of acquisition' but regarding non-consideration of 'cost of improvement'.

3. The Learned CIT(A) has not appreciated the Appellant's case in its proper context. Initially, the Learned AO assessed the cost of acquisition as Rs. 1,14,22,768/- in the assessment order under section 143(3) of the Income Tax Act 1961, ("Act") dated 16.12.16. Subsequently the Learned AO has correctly changed his opinion by reducing the cost of acquisition to Rs. 43,12,170/- in the rectification order dated 22.02.2017 under section 154 of the Act by excluding the 'cost of improvement' of Rs. 71,10,598/- incurred towards construction of house. The Learned CIT(A) has erroneously proceeded on the premise that the Learned AO has accurately assessed the cost of acquisition based solely on the 'Absolute Sale Deed' and disregarding the cost of improvement despite producing adequate documentation evidencing the cost incurred by the Appellant, which is the sole ground of appeal.

4. The Learned CIT(A) has simply upheld the reasoning of the Learned AO without independently assessing the matter or without providing any reasons for disregarding the submissions and ground of appeals filed by the Appellant and therefore has passed the impugned order with a prejudiced and pre-determined mind.

5. The Learned CIT(A) has erred in observing that the Learned AO was justified in rectifying the assessment order under section 154 of the Act, citing that the Learned AO rectified what he had omitted to do under the law. The CIT(A) overlooked the fact that the Learned AO had passed an order under section 143(3) of the Act after considering the information and explanation regarding the cost of improvement provided and concluded that the cost of acquisition to be Rs. 1,14,22,768/-. Further the Learned AO went on to pass a rectification

order under section 154 of the Act by reducing the cost of acquisition to Rs. 43,12,170/-. Therefore, this constitutes a change in opinion rather than an omission, and which does not warrant for rectification under section 154 of the Act.

6. The Learned CIT(A) having observed that the AO has changed the opinion, has erroneously concluded that the AO was justified on rectifying the assessment order, ignoring settled judicial precedents that assessment order cannot be rectified on the basis of mere change of opinion.

7. The Learned CIT(A) has erred in facts and law in making a reference to the case held in the Honourable High Court of Madras in the case of Sabari Alloys & Metals India (P) Ltd v. Deputy Commissioner of Income Tax. The facts of the present case differ from those of the above-mentioned case.

8. Moreover, the Learned AO erred in facts in issuing its order under section 154 of the Act. It erroneously concluded that the latest dated sale deed superseded the other deeds in question and determined the cost of purchase at Rs. 43,12,170/-only and failed to consider the actual cost incurred and paid by the Appellant towards the construction of the house.

9. The Learned AO has erred in adding interest under section 234A, 234B and 234C of the Act which are consequential to the above impugned additions.

10. The Appellant craves leave to add, rescind, modify the grounds hereinabove and all the above grounds are without prejudice to each other.”

3. The only dispute involved in this appeal is non-granting of cost of construction to the assessee of a property sold by taking only the cost of land at the time of computing capital gain on sale of a constructed property original computed correctly u/s 143 (3) of the Act but rectified u/s 154 of the act later on holding it to be error apparent from record.

4. The brief facts of the case show that assessee is an individual rendering consultancy services, filed his return of income on 31.7.2014 at a total income of Rs.2,24,420. The return was picked up for scrutiny and on examination the total income of assessee was assessed at Rs.3,92,420.
5. During the year assessee has sold a residential house as per Sale Deed dated 18.11.2023 to 3 different persons for a sale consideration of Rs.1 Crore. It was a covered land bearing survey Nos. 218 & 219 at Devanahalli Taluk, Bangalore Rural District aggregating to 7 acres 20 guntas. The developer was to develop 'Mulberry Meadows' therein. With the developer, assessee agreed to get constructed Villa No.36, admeasuring 2664 sq.ft. There was also a joint development agreement. All these facts are considered and incorporated in the agreement to Sell dated 02.3.2008 between the Seller, Preeti Developers P. Ltd., - Developer and Mr. Vinod Injeti – Purchaser, assessee. Thus, as per Annexure-B therein, the cost of land was Rs.46.80 lakhs, cost of construction was Rs.59,67,928 and standard common expenses were of Rs.8,52,072. Thus the total cost of acquisition of the above property was Rs.1,15,00,000. The assessment order u/s. 143(3) of the Act was passed on 16.12.2016 wherein the loss from capital gain was assessed considering the cost of acquisition at Rs.1,14,27,768 which was indexed at Rs.1,85,79,967 and considering sale price of Rs.1 Crore, long term capital loss was determined at a loss of Rs.85,79,967.
6. Subsequently a rectification order was passed on 22.2.2017 with assessed income of Rs. 2,24,418. Subsequent to that, another

rectification was carried out by order u/s. 154 of the Act on 29.12.2017. In that rectification order, it was mentioned that cost of acquisition of the above property was wrongly taken at Rs.1,15,00,000 as per agreement dated 02.3.2008. Land for this property was purchased by assessee as per Sale Deed dated 8.7.2010 at a total consideration of Rs. 40 lakhs. Subsequently this property was registered in favour of assessee by Sale Deed dated 8.7.2020 for consideration of Rs.40 lakhs and registration charges of Rs.3,12,170. So, the cost of acquisition of property should be Rs 40 lakhs Plus registration charges only. So, the cost of construction granted to the assessee as cost of acquisition is an error. Therefore long term capital gain was computed at wrong amount.

7. During the rectification proceedings, assessee submitted that sale deed of Rs.40 lakhs entered into by assessee on which registration charges of Rs.3,12,170 is cost of the land and further the cost of construction of Villa paid by the assessee is also to be considered as cost of acquisition of the property, because assessee has sold a Villa and not open plot of land. The assessee substantiated proof payment of sum paid to the developer.
8. However, the Id. AO passed an order u/s. 154 of the Act on 29.12.2017 wherein cost of acquisition was granted at Rs.56,94,975 only. The sale consideration was also reduced to Rs.80 lakhs and net long term capital gain of Rs.23,05,025 was considered, assessing revised total income of Rs.25,29,443.

9. The assessee aggrieved with the same preferred an appeal before the Id. CIT(A) challenging that there is no mistake apparent from the record which warrants any rectification u/s. 154 of the Act. The assessee also explained that Id. AO has wrongly computed the long term capital gain in rectification proceedings. The Id. CIT(A) found that subsequent Sale Deed entered into by assessee has superseded earlier agreements and further as the details of development charges paid to developer is not available, the Id. AO is correct in passing order u/s. 154. Aggrieved with the same, assessee is in appeal before us.
  
10. Ms. Jyothi Anumolu, Advocate, Id. AR submitted that on 02.3.2008 assessee entered into a purchase agreement along with the owner and developers – Preeti Developers P. Ltd., where assessee is purchaser. The seller being Vendor, agreed to transfer the land of 7 acres 20 guntas converted into non-agricultural property for residential purposes. The owners also having entered into joint development agreement with Preeti Developers P. Ltd. on 24.11.2006 for construction of a Villa. As per agreement, total cost of property was divided as cost of land of Rs.46,80,000 payable to the Vendor, cost of construction of Rs.56,97,928 payable to the developer and certain common standard expenses were estimated at Rs.8,52,072. Accordingly total cost of acquisition of the property was agreed at Rs.1,15,00,000 which is demonstrated at page 29 of 32 of agreement to sell. Subsequently on 8.7.2010, this Agreement to Sell was converted into a Sale Deed and the price of land was determined at Rs.40 lakhs. The assessee has entered into Absolute Sale Deed on 8.7.2010. The Id. AO incorrectly recorded

that cost of acquisition of property is Rs.40 lakhs. Therefore rectification proceedings were initiated and original cost of acquisition granted to assessee of Rs.1,15,00,000 was reduced by cost of land. It was submitted that as per Sale Deed dated 18.11.2013, assessee has sold property for a consideration of Rs.1 Crore and the correct computation of long term capital gain at page 36 of paperbook shows that there is no error apparent from the record. It was also stated that the AO has already applied his mind to the facts of the case and has computed long term capital gain, therefore there is no question of any rectification u/s. 154 of the Act.

11. Shri Ganesh R. Gale, Standing Counsel The Id. DR vehemently supported the order of the Id. AO. He referred to the various clauses of the agreement to sale and sale deed and submitted that cost of acquisition of the property was wrongly taken earlier and now corrected therefore it is mistake apparent from record and orders of the lower authorities are sustainable.
12. We have carefully considered the rival contentions and perused the orders of Id. Lower authorities. Facts of the case show that in the original assessment order passed u/s. 143(3) of the Act, the Id. AO has computed the long term capital gain earned by the assessee where sale consideration was taken at Rs.1 crore and the cost of acquisition was taken at Rs.114,22,768 which was indexed to Rs.185,79,967 resulting into a long term capital loss of Rs.85,79,967. This was based on the documents furnished by the assessee being Agreement of Sale dated

2.3.2008 between the Seller, Preeti Developers P. Ltd. (developer) and the assessee – the Purchaser. As per Agreement of Sale, land was to be sold by the owner and construction was to be made by the developer. The assessee in turn made payment for purchase of land as well as to the developer for construction. Subsequently it was found that Sale Deed dated 8.7.2010 which was transfer document titled as ‘Absolute Sale Deed’ entered into for construction of Rs.40 lakhs was for transfer of land, the Id. AO passed a rectification order wherein he wanted to consider only Rs.40 lakhs as cost of house property which was comprising of land purchased by assessee and development cost paid by assessee to developer. This is so because, Id. AO considered that Rs 40 lakhs includes cost of land as well as the construction cost of Villa. Merely on the basis of Sale Deed for land, the Id. AO reached at a conclusion that cost of acquisition computed by assessee should be only Rs.40 lakhs and not Rs.1,14,00,000. Thus, in substance, by rectification order, assessee was allowed only the cost of land and denied cost of construction of the property paid by the assessee to the developer for computation of capital gain for sale of a villa. The assessee has made payments to the developer starting from 22.01.2008 to 03.09.2009 through account payee cheques from account of assessee himself as well as from his father’s account for the construction cost. The details are tabulated at page 3 of paperbook and also supported by bank account statement of Axis Bank of the assessee. In view of the above facts, we do not find any reason that assessee can only be granted cost of land as cost of acquisition of a capital assets i.e. villa, and cannot be granted

cost of construction of a Villa, when assessee has sold such Villa. The original assessment order was passed u/s. 143(3) of the Act after considering all these details and assessee was granted cost for acquisition of the land as well as cost of construction of the property, when such constructed property was sold. Merely because assessee entered into an Absolute Sale Deed of the land which was naturally subsequent to the original Agreement of Sale, it does not change the character of the transaction. Under section 154 of the Act only mistake apparent from record could have been rectified. Here, the Id. AO has tried to consider capital gain of constructed property and as cost of acquisition has granted only cost of land as deduction. Thus, not allowing assessee the deduction of cost of construction from computation of capital gain when assessee has sold a constructed property cannot be said to be a mistake apparent from record. The assessee has also produced the complete details of each and every payment made to the developer which is being part of cost of construction and substantiated by the bank statement of the assessee. Though there are certain mismatch in the computation of capital gains, but we are least concerned with that as it was not the ground for rectification u/s 154 by the Id. AO. Therefore, the Id. AO is not justified in passing an order u/s. 154 of the Act by denying deduction of cost of construction to the assessee in the rectification proceedings. Further, the Id. CIT(A) has also not considered the evidences placed before him, but has merely held that Sale Deed supersedes the earlier agreement. There is no dispute that Agreement to Sell culminating into

Sale Deed naturally supersedes the original Agreement to Sell, but however, it does not say that when the Sale Agreement was also of the land along with development cost and which culminated into Sale Deed of the land, assessee should be denied the deduction of cost of construction. In the result, we reverse the orders of the Id. lower authorities and rectification order passed u/s. 154 of the Act on 29.12.2017 is quashed. Thus, ground No.3 of appeal of the assessee is allowed.

13. All other grounds of appeal are merely supporting the above contentions. Accordingly those grounds are also allowed in view of our decision in ground No.3 of the appeal.

14. In the result, the appeal filed by the assessee is allowed.

Pronounced in the open court on this 22<sup>nd</sup> day of November, 2024.

Sd/-

( KESHAV DUBEY )  
JUDICIAL MEMBER

Bangalore,  
Dated, the 22<sup>nd</sup> November 2024.

*/Desai S Murthy /*

Sd/-

( PRASHANT MAHARISHI )  
VICE PRESIDENT

Copy to:

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

By order

Assistant Registrar  
ITAT, Bangalore.