

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

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.362/PUN/2025
निर्धारण वर्ष / Assessment Year : 2018-19

MCM Developers, 2 nd Floor, Tapadiya Terraces, Adalat Road, Aurangabad- 431001. PAN : AAXFM0436D	Vs.	DCIT, Central Circle-1, Aurangabad.
Appellant		Respondent

Assessee by : Shri Pramod Shingte
Revenue by : Shri Amol Khairnar

Date of hearing : 07.08.2025
Date of pronouncement : 17.09.2025

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 16.12.2024 passed by Ld. CIT(A), Pune-12 ['Ld. CIT(A)'] for the assessment year 2018-19.

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

"1. On the facts and in the circumstances of the case and in law the lower authorities erred in passing, a rectification order under section 154 dated 11/09/2021, thereby changing the section for initiating the penalty action, from Section 269ST to 269SS and further changing the initiating of penalty section from Section 271DA to 271D. The action cannot be considered as apparent mistake rectifiable under Section 154, as the initial invocation of penalty under section 271DA was with

complete application of mind by Learned Assessing Officer as well as by Learned Joint CIT who also initiated penalty proceedings under section 271DA therefore order passed under section 154 is bad in law and deserves to be struck down.

Your appellant prays for deletion of entire addition. Your appellant craves for to add, alter amend, modify, delete any or all grounds of appeal before or during the course of hearing in the interest of natural justice.”

3. Facts of the case, in brief, that the assessee is a firm engaged in the business of builders, developers, contractors, real estate agent and brokers etc. A notice u/s 153C of the IT Act was issued to the assessee and after considering replies of the assessee, vide order dated 07.05.2021 assessment order u/s 153A r.w.s. 153C of the IT Act was passed by assessing net loss of Rs.55,13,110/- as against the loss returned by the assessee at Rs.2,86,55,166/-. The above loss was assessed after making addition of Rs.1,22,21,350/- on account of profit determined on cash receipt of Rs.2,50,14,000/- and also includes addition of Rs.1,06,92,650/- on account of disallowance of cash expenses in violation of section 40A(3) and also addition of Rs.2,28,056/- on account of ad-hoc disallowance out of various expenses, accordingly the returned loss was reduced by total addition of Rs.2,31,42,056/-.

4. In the above said assessment order, the Assessing Officer, on the basis of seized documents found, that the assessee firm has sold

the flats to the various purchasers and received on money of Rs.2,50,14,000/- in cash and therefore contravened the provisions of section 269ST of the IT Act by receiving the above cash of Rs.2,50,14,000/- and accordingly a reference was made by him to Joint Commissioner of Income Tax for initiation of penalty u/s 271DA of the IT Act.

5. Subsequently, vide notice dated 20.08.2021 the Assessing Officer issued notice u/s 154 of the IT Act to rectify the above assessment order dated 07.05.2021 mentioning that

“1. At Para 5.9 of the said assessment order, section 269ST of the Act is written inadvertently. The section should be 269SS in place of 269ST. Accordingly, reference made to the Joint Commissioner of Income Tax, Central Range, Nashik for initiation of penalty u/s 271DA should be 271D. Hence, it is proposed to be rectified”.

6. Since the assessee did not reply to the above said notice, the Assessing Officer vide order dated 11.09.2021 passed rectification order u/s 154 r.w.s. 153C of the IT Act by observing as under :-

“4. On perusal of the assessment order passed on 07/05/2021 in this case, it was seen that at Para 5.9 of the said assessment order, section 269ST of the Act is written inadvertently. The section should be written as 269SS in place of 269ST. The Para 5.9 of the order passed u/s 143(3) r.w.s 153C of the Act is reproduced as under:

“5.9 Therefore, the addition of Rs. 1,22,21,350/- (Rs.2,50,14,000- Rs. 1,06,92,650- Rs. 21,00,000) is being made under the head Profits and gains of business and profession. Penalty proceedings u/s 270A of Income Tax Act are hereby initiated for under-reporting of income which is in consequence

of misreporting thereof. Further, as the assessee failed to comply the provision of section 269ST of the I.T.Act, 1961 by receiving of cash of Rs. 2,50,14,000/-, hence a reference is being made to Joint Commissioner of Income Tax, Central Range, Nashik for initiation of penalty u/s 271DA of the I.T.Act, 1961."

5. *As the assessee has sold the flats to the purchasers and received on money of Rs. 2,50,14,000/- and failed to comply the provision of section 269SS of the T.T. Act, 1961 not the provision of section 269ST of the I.T.Act, 1961. Thus in this case section 269SS is applicable.*

6. *As there is mistake apparent from the record within the meaning of section 154 of the IT Act, 1961. Hence, a notice u/s 154 of the Act was issued to the assessee on 20/08/2021 and the same was duly served on the assessee on 20/08/2021. The assessee was asked to submit reply in this connection by 27/08/2021. On perusal of the records, it is seen that the assessee has not submitted any reply. Hence, it is presumed that the assessee has nothing to say in connection to the rectification.*

7. *In view of the above discussions and facts of the case, order u/s 154 of the I.T.Act, 1961 is hereby passed and para 5.9 of the assessment order passed u/s 143(3) r.w.s 153C of the Act on 07/05/2021 is rectified as under:*

"5.9 Therefore, the addition of Rs. 1,22,21,350/-(Rs.2,50,14,000-Rs. 1,06,92,650- Rs. 21,00,000) is being made under the head Profits and gains of business and profession. Penalty proceedings u/s 270A of Income Tax Act are hereby initiated for under-reporting of income which is in consequence of misreporting thereof. Further, as the assessee failed to comply the provision of section 269SS of the I.T.Act, 1961 by receiving of cash of Rs. 2,50,14,000/-, hence a reference is being made to Joint Commissioner of Income Tax, Central Range, Nashik for initiation of penalty u/s 271D of the I.T.Act, 1961."

7. Aggrieved with the above rectification order, the assessee preferred an appeal before Ld. CIT(A). After considering the reply of the assessee, Ld. CIT(A) dismissed the appeal filed by the assessee by observing as under :-

4.5 *In view of the above, I am of the considered view that mentioning of section 269ST and referring the matter to the JCIT for initiation of penalty u/s 271DA instead of 269SS and 271D is a glaring mistake*

apparent from the record. The AO was well within his powers to rectify this mistake apparent from the record. I do not find any infirmity in the action of the AO in rectifying the above mistake. The action of the AO in rectifying the mistake is upheld.

In the result, ground no. 1 raised by the appellant is dismissed.

Ground No.2:

5. Under this ground of appeal the appellant has sought to reserve the right to add/alter/ amend / withdraw any of the grounds of appeal. Since no such request has been made by the appellant during appellate proceedings, this ground is hereby dismissed.

6. With the result, appeal is dismissed.”

8. It is the above order against which the assessee is in appeal before this Tribunal.

9. Ld. AR appearing from side of the assessee submitted before us that the order passed by Ld. CIT(A) is unjustified wherein the rectification order passed u/s 154 of the IT Act by the Assessing Officer was confirmed. Ld. AR submitted before the bench that section 154 of the IT Act permits rectification of a mistake apparent from the record & in the instant case in hand there is no such apparent mistake which needs rectification u/s 154 of the IT Act. Ld. AR further submitted that as per original assessment order the Assessing Officer was of the view that the assessee failed to comply with the provision of section 269ST of the IT Act by receiving cash of Rs.2,50,14,000/- and hence a reference was made to the Joint Commissioner of Income Tax, Central Range, Nashik for initiation

of penalty u/s 271DA of the IT Act and the Joint Commissioner of Income Tax, Central Range, Nashik also issued notice for imposition of penalty u/s 271DA of the IT Act.

10. However, subsequent to all these events the Assessing Officer suddenly changed his mind and rectified his own order by changing the legal basis of the penalty from section 269ST to 269SS of the IT Act. Ld. AR submitted that the Assessing Officer consciously invoked the provision of section 269ST, since according to him the default narrated in the assessment order was specific that is accepting the alleged on money amounting in all to RS Rs.2,50,14,000/- from various persons in connection with the transaction of sale of flats being stock in trade involving more than Rs.2,00,000/- for a single transaction and therefore there was no occasion with the Assessing Officer to rectify his own order and change the section voluntarily. In support of these contentions, Ld. AR relied on the judgement passed by Hon'ble Supreme Court in the case of CIT vs. Hero Cycles P. Ltd. (1997) 94 Taxman 271 (SC) & T.S. Balaram, Income-tax Officer vs. Volkart Brothers (1971) 82 ITR 50 (SC) wherein Hon'ble Supreme Court held that "a mistake apparent on the record" must be an obvious and a 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.

11. Accordingly, Ld. AR requested before the bench to set-aside the order passed by Ld. CIT(A) and also requested to quash the rectification order passed by the Assessing Officer u/s 154 of the IT Act.

12. Ld. DR appearing from side of the Revenue relied on the order passed by the subordinate authorities and requested to confirm the same.

13. We have heard Ld. counsels from both the sides and perused the material available on record including the copy of case law furnished by the assessee. In this regard, we find that the Assessing Officer invoked section 269SS & section 271D in rectification proceedings u/s 154 of the IT Act after having originally applied section 269ST & section 271DA in the original assessment order passed u/s 153A r.w.s. 153C of the IT Act. In this regard, we find that the assessee firm is engaged in the real estate business and during the period under consideration sold number of flat being stock in trade to various persons and allegedly accepted on money

amounting in all to Rs.2,50,14,000/- in cash, apart from agreement value. Originally, the Assessing Officer was of the view that the assessee firm has not complied with the provisions of section 269ST of the IT Act by receiving cash of more than Rs.2,50,14,000/- from various persons who purchased flats from the assessee and therefore he also made a reference to the Joint Commissioner of Income Tax to initiate penalty u/s 271DA of the IT Act. The Joint Commissioner of Income Tax also issued notice for imposition of penalty u/s 271DA of the IT Act for violation of section 269ST of the IT Act. However, prior to imposition of penalty u/s 271DA of the IT act by the Joint Commissioner of Income Tax, the Assessing Officer revised the assessment order u/s 154 of the IT Act and changed the legal basis for imposition of penalty from section 269ST to section 269SS of the IT Act. For this purpose the Assessing Officer issued following notice u/s 154 of the IT Act :-

“1. At Para 5.9 of the said assessment order, section 269ST of the Act is written inadvertently. The section should be 269SS in place of 269ST. Accordingly, reference made to the Joint Commissioner of Income Tax, Central Range, Nashik for initiation of penalty u/s 271DA should be 271D. Hence, it is proposed to be rectified.

14. From perusal of above notice, we find that if section 269ST of the IT Act was written inadvertently then mentioning of

corresponding penalty section 271DA could not be a typographical error. It could be said to be a typographical error only if section 269ST was typed along with penalty section 271D of the IT Act which is applicable for violation of section 269SS of the IT Act. However we do not find any such inadvertent error as claimed by the Assessing Officer, therefore we are of the considered view that in the original assessment order section 269ST & section 271DA were mentioned after due application of mind consciously by the Assessing Officer.

15. We further find that while passing rectification order u/s 154 of the IT Act the Assessing Officer was of the view that the assessee firm has violated the provisions of section 269SS of the IT Act since the assessee has sold the flats to various purchasers & received cash in excess of Rs.2,00,000/- in a single transaction and therefore the provisions of section 269ST were not attracted which invites penalty u/s 271DA of the IT Act , hence the impugned rectification order u/s 154 of the IT Act was passed by the Assessing officer which was challenged before Ld. CIT(A) who dismissed the appeal filed by the assessee.

16. In this regard, we find that the solitary question which is required to be answered by the bench is that, whether or not the Assessing Officer can substitute section 269SS and corresponding penalty section 271D of the IT Act in place of section 269ST and corresponding penalty section 271DA of the IT Act u/s 154 rectification proceedings. In this regard, we find that Ld. AR has relied on various judgements passed by Hon'ble Supreme Court wherein time and again it has been held that, only the mistake which is apparent from record can be rectified and if the issue in question is debatable and two views are possible than the rectification is not permissible. In the instant case in hand, we find that there is no apparent or glaring mistake which can be rectified by the Assessing Officer u/s 154 rectification proceedings. The action of the Assessing Officer tantamounts to change of opinion which is not permissible u/s 154 rectification proceedings.

17. In this regard we find that earlier the Assessing Officer himself was of the opinion that the assessee firm has violated the provisions of section 269ST of the IT Act, since it has received cash amounting in all to Rs.2,50,14,000/- from various purchasers of flat in excess of Rs.2,00,000/- and therefore he made reference to the

Joint Commissioner of Income Tax for initiating the penalty u/s 271DA of the IT Act. Subsequently, he changed his mind and revised his own order in rectification proceedings and wrote that the assessee firm has violated the provisions of section 269SS of the IT Act and consequently made revised reference to the Joint Commissioner of Income Tax for initiating the penalty u/s 271D of the IT Act.

18. With regard to the above action of the Assessing Officer we find that apparently there appears to be change of opinion by the Assessing Officer & we find that there are two different legal views which can be adopted by the Assessing Officer and one legal view has already been taken by him therefore the other view cannot be substituted u/s 154 rectification proceedings in place of earlier legal view.

19. With regard to above we find that Hon'ble Delhi High Court in the case of Birmala Projects (P.) Ltd. vs. Ashwani Ahluwalia [2025] 171 taxmann.com 755 (Delhi), while dealing with the matter involving the issue of recovery of cash of Rs.1,50,00,000/- paid during the transaction related to immovable property, & also Hon'ble Supreme Court in the case of, Correspondence, RBANMS

Educational Institution vs. B. Gunashekar [2025] 173 taxmann.com 586 (SC), while dealing with the matter involving the issue of cash advance of Rs.75 lakhs paid during the transaction related to immovable property, has discussed the applicability of section 269ST of the IT Act with regard to cash transactions involving immovable property. Hon'ble Delhi High Court as well as Hon'ble Supreme Court in the cases cited supra indicated that the aforesaid receipt by the party is a plain violation of section 269ST of the IT Act, as the transaction has very well exceeded the limit of Rs.2 lakhs.

20. In the light of above judgement of Hon'ble Delhi High Court in the case of Birmala Projects (P.) Ltd. vs. Ashwani Ahluwalia (supra) and also in the light of judgement of Hon'ble Supreme Court in the case of, Correspondence, RBANMS Educational Institution vs. B. Gunashekar (supra), we find that Hon'ble courts have indicated similar view which was adopted by the Assessing Officer in original assessment proceedings that the consideration towards immovable property, received in cash exceeding Rs.2 lakhs violates the provisions of section 269ST which invites penalty u/s 271DA of the IT Act. Accordingly we hold that the Assessing

Officer has adopted one of the possible legal view in the original assessment order & therefore in the light of Judgements passed by Hon'ble Supreme court in the case of T.S. Balaram, Income-tax Officer vs. Volkart Brothers (1971) 82 ITR 50 (SC), rectification u/s 154 of the IT Act is not permissible. Hon'ble Supreme court in the above case T.S. Balaram, Income-tax Officer vs. Volkart Brothers (1971) 82 ITR 50 (SC), dismissed the departmental appeal filed by the revenue & the rectification order passed by the Assessing Officer u/s 154 of the IT Act was held to be wrong. The relevant para of the judgement of Hon'ble Supreme Court in the case of T.S. Balaram, Income-tax Officer vs. Volkart Brothers (1971) 82 ITR 50 (SC) is reproduced herein below :-

“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 Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale [1960] 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 AndannappaManvi 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 the 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.

For the reasons mentioned above, we dismiss this appeal with costs."

21. Respectfully following the above judgement passed in the case of T.S. Balaram, Income-tax Officer vs. Volkart Brothers (1971) 82 ITR 50 (SC) wherein it was observed 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."

we are of the considered opinion that the rectification order passed u/s 154 of the IT Act by the Assessing Officer is not correct. It is evident that there was no mistake apparent from the record warranting rectification u/s 154 of the IT Act since the earlier action of the Assessing Officer invoking the provisions of section 269ST and simultaneously referring the matter to the Joint Commissioner of Income Tax for initiation of penalty proceedings u/s 271DA of the IT Act was taken after due application of mind and was one of

the possible view which could have been taken by the AO. Accordingly, we deem it appropriate to set-aside the order passed by Ld. CIT(A) and quash the proceedings initiated u/s 154 of the IT Act & also quash the consequential rectification order passed u/s 154 of the IT Act by the Assessing Officer. The grounds of appeal raised by the assessee are allowed.

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

Order pronounced on this 17th day of September, 2025.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 17th September, 2025.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), Pune-12.
4. The Pr.CIT/CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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