IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Anubhav Sharma, Judicial Member

ITA No. 1199/Del/2022 : Asstt. Year : 2010-11

Anurag Singh, House No. 140, Block-G, DLF, Sector-10, Faridabad-121006	Vs	Income Tax Officer, Ward-1(1), Faridabad-121001
(APPELLANT)		**(RESPONDENT)**
PAN No. BFRPS3822R		

Assessee by : Ms. Kanika Gupta, CA
Revenue by : Sh. Amit Katoch, Sr. DR

Date of Hearing: 08.02.2024		**Date of Pronouncement: 24.04.2024**

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of National Faceless Appeal Centre (NFAC) dated 30.03.2022.

2. Following grounds have been raised by the assessee:

"1. That having regard to the facts and circumstances the order of Ld CIT(A) NFAC Delhi, is bad in law and on facts. The Ld. CIT(A) NFAC Delhi, erred in holding the order u/s 154 passed by the AO on 30.03.2021 as a valid order, while the original assessment order passed by the then AO did not suffer from any mistake apparent from records. The Ld. CIT (A) NFAC gravely erred in presuming the order passed by the Ld. AO u/s 143(3) read with 147 as erroneous. That the learned CIT(A) failed to appreciate that the alleged mistake as pointed out by the learned Assessing Officer is not apparent from record; not obvious and patent. The alleged mistakes are such which require a long drawn process of reasoning on points on which there may be conceivably two opinions to establish.

2. That having regard to the facts and circumstances of the case, the Ld. CIT(Appeal) NFAC has erred in law by not considering submission made by the appellant. The order of

the learned CIT (A) NFAC suffers from the Principal of Natural Justice having been passed without adjudication of various grounds raised and by not passing a speaking order.

3. That the appellant denies to be assessed at an income of Rs. 28,83,660/- (after considering relief granted by CIT (A) NFAC, Delhi).

4. That the order of the learned CIT(A) is bad in law and on facts since it failed to appreciate that the order rectified under section 154 of the Act on 30.03.2021 was an order passed by the learned Assessing Officer under section 147/148 of the Act, 1961 dated 17.11.2017 and the issue which was rectified was a subject matter of appeal before the learned authorities and consequently in view of Section 154(1A) of the Income-tax Act, 1961, the learned Assessing Officer exceeded his jurisdiction which is not permissible in law on the facts and circumstances of the case."

3. Brief facts of the case are that the case was reopened by issue of notice u/s 148 of I. T. Act on 21.03.2017. AIR information had revealed that the appellant had deposited cash amounting to Rs.25,50,000/- in his bank account. The Assessing Officer obtained copy of bank account from the bank u/s 133(6) of I.T. Act. The Assessing Officer sought the assessee to establish the source of the deposit with documentary evidence. Vide reply dated 09.11.2017, the assessee stated that the amount of Rs.25,50,000/- had been received from 4 relatives, namely Sh. Bhrampal Singh the father-in-law of Rs. 6,50,000/-, Sh. Ram Milan Singh the grandfather of Rs. 12,50,000/-, Sh. Durgesh Singh, the brother-in-law of Rs.3,00,000/- and the wife Smt. Nandani Singh of Rs.3,55,000/-. The Assessing Officer completed the assessment vide Assessment Order dated 17.11.2017, making the addition of Rs.3,55,000/- disputing the claim of the assessee that the amount has been received as gift from the wife.

4. For the sake of ready reference, the proceedings before the Assessing Officer are reproduced below:

"4. The assessee vide his reply dated 09.11.2017 furnished the details regarding the source of said deposits which is reproduced as under:

"In this connection, I would like to bring in your kind notice that the assessee have received the sum of Rs.25,50,000/- from know my following relatives and deposited in our joint account with my wife Smt. Nandini Singh as mentioned below:

1)	*Rs.650000/-*	*Lt. Shri Brahma Pal Singh, Father in Law Fatehgarh, Farrukhabad, UP*
2)	*Rs.1250000/-*	*Sh. Ram Milan Singh, Grand Father Village- Jamalpur, Sultanpur, UP*
3)	*Rs.300000/-*	*Mr. Durgesh Singh, Brother in Law, Fatehgarh, Farrukhabad, UP*
4)	*Rs.355000/-*	*Mrs. Nandini Singh, Joint Account Holder*

The confirmation and other relevant documents are being submitted for your kind information and record please."

5. In response the same on 09.11.2017, the assessee filed an affidavit explaining that the said amount was received the sum of Rs. 25,50,000/- from my relatives and deposited in our joint account with my wife Smt. Nandini Singh. During the verification, it was noticed that the assessee received Rs.3,55,000/- from his wife Smt. Nandini Singh who had filed an affidavit, in where stated that the amount was received by her from saving & gift from relative but no such documentary evidence was filed with affidavit. Further, the same was examined but the affidavit of his wife could not establish the genuineness of the gift given because no documentary evidence. In view of the above and in absence of any documentary evidence, amount of Rs.3,55,000/- is added to the total income of the assessee."

5. Aggrieved with the addition of Rs.3,55,000/- the assessee filed appeal filed before the ld. CIT(A). The ld. CIT(A) deleted the addition made by the Assessing Officer of Rs.3,55,000/- holding that the assessee has furnished relevant confirmations. For the sake of ready reference, the relevant portion of the order of the ld. CIT(A) is reproduced below:

> *"…….During the appellate proceedings it has been stated that Smt. Nandini Singh has received amount of Rs.3,00,000/- from Sh. Ram Milan Singh, her grandfather in law and Rs.55,000/- from Sh. R.P. Gupta and furnished affidavits from Sh. Ram Milan Singh and Sh. R.P. Gupta as confirmations. The submission of the appellant has been reproduced as above.*
>
> *6. It is noted from the facts of the case that the appellant has claimed as having received amount of Rs.12,50,000/- from Sh. Ram Milan Singh, his grandfather during the assessment proceedings. This claim has been examined by the AO and has been accepted as genuine. On the basis of this finding of the AO and explanation of the appellant, it is held that the appellant has explained the source of further amount of Rs.3,00,000/- as received from Smt. Nandini Singh. Regarding the remaining amount of Rs.55,000/- the appellant has furnished confirmation from Sh. R.P. Gupta along with his address and PAN number. Keeping in view the amount involved and explanation furnished by the appellant, it is held that there remains no justification for the addition of Rs.3,55,000/- the same is hereby deleted. Ground Nos. 3,4 and 5 of the appellant are allowed."*

6. Thus, the matter rested by the order of the ld. CIT(A) dated 31.12.2018. On 30.03.2021, the Assessing Officer passed an order u/s 154 of the Income Tax Act, 1961 determining the assessed income at Rs.35,93,660/- against the returned income determined by the AO of Rs.6,88,660/- vide Assessment Order

dated 17.11.2017. For the sake ready reference, the order passed u/s 154 of the Income Tax Act, 1961 is reproduced below:

"ORDER UNDER SECTION 154 OF THE INCOME TAX ACT, 1961

In this case, assessment u/s 147/143(3) of the Act was completed at total income of Rs.6,88,660/- on 15.09.2017.

2. Subsequently, the following mistakes were detected from the records:-

While going through the record, it has been noticed that assessee have received Rs 3,55,000/- from his wife Smt. Nandini Singh who had filed an affidavit. In where stated that the amount was received by her from saving and gift from relative but no such documentary evidence was file with affidavit Further, the same was examined but the affidavit of his wife could not establish the genuineness of the gift given because no documentary evidence. In view of the above and in absence of any documentary evidence, amount of Rs. 3,55,000/- is added to the total income of the assessee.

3. The only source of income of the assessee is salary of Rs.4,32,808/- only whereas the assessee has deposited cash in his saving bank account amounting to Rs. 25,50,000/-. On perusal of the documents available, it is seen that whole amount of Rs.25,50,000/- received from four different relatives are in cash as reproduced supra and claimed to have been deposited in his saving bank account of the assessee. The assessee claimed to have been received an amount of Rs.6,50,000/- from Late Sh. Brahma Pal Singh, Father-in-Law on 15.07.2009 whereas assessee has deposited Rs. 5,00,000/- on 21.07.2009 and again Rs. 5,00,000/- on 22.07 2009 which questioned the genuineness of the transaction and it is also strange to note that his brother-in-law Mr. Durgesh Singh gave an amount of Rs.3,00,000/- to assessee out of love and affection inspite of having annual

income of Rs. 3,00,000/- Similarly the amount of Rs. 12,50,000/- received from his grandfather Sh. Ram Milan Singh cannot be proved genuine mere on the basis of the affidavits filed by the assessee. The reply submitted by assessee and the affidavits of his relatives is totally a made up story and even does not match with the bank account. All these facts on record clearly prove that you have another source of income which has not been disclosed to the department.

4. To rectify the above mistake a notice u/s 154 of the Act was issued to the assessee 23.03.2021 for 25.03.2021. In response the assessee has not filed any reply it appears that the assessee has nothing to say in the matter. The mistake being apparent from records is rectified u/s 154 of the Act as under:

Income assessed as per order u/s 147/143(3) dated 15.09.2017	*Rs.6,88,660/-*
Discussed as per para 1	*Rs.3,55,000/-*
Discussed as per para 3	*Rs.25,50,000/-*
Gross total income	*Rs.35,93,660/-*
Tax including interest	*Rs.24,79,557/-"*

7. Aggrieved, the assessee filed appeal before the ld. CIT(A) against the order of rectification passed u/s 154.

8. The ld. CIT(A), NFAC affirmed the order of the Assessing Officer passed u/s 154 holding that the AO has not given any finding about acceptance of evidence/explanation of the assessee in respect of the source of cash deposit of Rs.25,50,000/- and it is an apparent mistake amenable to rectification u/s 154 of the Income Tax Act, 1961. For the sake of ready reference, the relevant part of the order of ld. CIT(A) is reproduced as under:

"5.1. Brief facts of the case are that the case was reopened by issue of notice u/s 148 of I.T. Act on 21.03.2017. AIR information had revealed that the appellant had deposited cash amounting to Rs.25,50,000/- in his bank account. The Assessing Officer obtained copy of bank account from the bank u/s 133(6) of I.T. Act. He asked the appellant to establish the source of the deposit with documentary evidence. Vide reply dated 09.11.2017 of the appellant it was stated that the amount of Rs.25,50,000/- had been received from 4 relatives, namely father-in-law, Rs.6,50,000/-, Grandfather Rs. 12,50,000/- ,brother-in-law Rs.3,00,000/- and wife Nandani Singh, also the joint account holder, Rs.3,55,000/-. Copy of affidavit by the appellant's wife was filed before the Assessing Officer. The AO was not convinced with the reply. However, in the assessment order dated 17.11.2017 the AO wrongly returned the amount of addition as Rs.3,55,000/- instead of Rs.25,50,000/-. Subsequently, the AO passed a rectification order u/s 154 of I.T. Act on 30.03.2021 rectifying the mistake and making addition of Rs.25,50,000/-. The appellant is aggrieved with the rectification order and had filed the present appeal challenging the validity of the same.

5.2 The appellant has contended that the rectification order passed is void ab-initio as the same there was no apparent mistake and involved debatable topic and that order u/s 147 passed by the AO could not have been rectified. All grounds are taken up together for adjudication, as all the grounds challenge the validity of the order u/s 154 of I.T. Act passed by AO. The appellant had relied upon various judicial decisions to support its claim.

5.3 I have carefully considered the facts of the case in light of the written submission filed and the judicial decision relied upon by the appellant.

5.4 It is clear from the original order dated 17.11.2017 passed by the AO that the AO had discussed about the facts and

explanation offered by the appellant. He was not convinced with the explanation. The AO duly observed that no documentary evidence was filed with the affidavit of the wife of the appellant and that the affidavit of his wife could not establish the genuineness of the gift given. However, the amount of addition was mentioned by the AO at Rs.3,55,000/- instead of Rs.25,50,000/- This was clearly a typographical mistake, which was not intended by the AO. The AO had not given any finding about acceptance of the evidence/ explanation of the appellant in respect of the source of cash deposit of Rs.25,50,000/-. Hence, it definitely is an apparent mistake amenable to rectification u/s 154 of I.T. Act.

5.5 However, it is seen that the Assessing Officer had already added Rs.3,55,000/- in the original assessment order. The appellant has contended that due to addition of Rs.25,50,000/- again, this amount has been added twice. The AO should reduce the same le. Rs.3,55,000/-, from the assessed income."

9. Aggrieved with the order of the ld. CIT(A), the assessee filed appeal before us.

10. The ld. AR argued that the order u/s 154 cannot be passed after the passing of the order by the ld. CIT(A) as per the provisions of Section 154(1A).

11. The ld. DR argued that the provisions of Section 154(1A) do not impede the rectification carried by the AO which is *prima facie* mistake of taking the figure of Rs.3,55,000/- instead of Rs.25,50,000/-.

12. Heard the arguments of both the parties and perused the material available on record. The timelines are as under:

- Date of passing of Assessment Order – 17.11.2017
- Date of passing of ld. CIT(A)'s order – 31.12.2018

- Date of passing of order u/s 154 – 30.03.2021
- Date of passing of ld. CIT(A)'s order – 30.03.2022

13. Provisions of Section 154 of the Income Tax Act, 1961 reads as under:

> *"Rectification of mistake.*
>
> *154. [(1) With a view to rectifying any mistake* ***apparent from the record*** *an income-tax authority referred to in section 116 may,—*
>
> *(a)* ***amend any order*** *passed by it under the provisions of this Act ;*
>
> *[(b) amend any intimation or deemed intimation under sub-section (1) of section 143.]]*
>
> *[(1A)* ***Where any matter has been considered and decided in any proceeding by way of appeal*** *or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.]*
>
> *(2) Subject to the other provisions of this section, the authority concerned—*
> *(a) may make an amendment under sub-section (1) of its own motion, and*

(b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee, and where the authority concerned is the [***] [Commissioner (Appeals)], by the [Assessing] Officer also.

[* *]*

(3) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(4) Where an amendment is made under this section, an order shall be passed in writing by the income-tax authority concerned.

(5) Subject to the provisions of section 241, where any such amendment has the effect of reducing the assessment, the [Assessing] Officer shall make any refund which may be due to such assessee.

(6) Where any such amendment has the effect of enhancing the assessment or reducing a refund already made, the 96[Assessing] Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 156 and the provisions of this Act shall apply accordingly.

(7) Save as otherwise provided in section 155 or sub-section (4) of section 186 no amendment under this section shall be made after the expiry of four years 98[from the end of the financial year in which the order sought to be amended was passed.]

[(8) Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made by the assessee on or after the 1st day of June, 2001 to an income-tax authority referred to in sub-section (1), the authority shall pass an order, within a period of six months from the end of the month in which the application is received by it,—

(a) making the amendment; or

(b) refusing to allow the claim.]"

14. In the instant case, we find that the case has been selected for scrutiny to examine the receipt of cash of Rs.25,50,000/- by the assessee. The assessee during the assessment proceedings has furnished evidences and affidavit to prove the source of cash. The Assessing Officer after receipt of the reply with regard to the cash deposit of Rs.25,50,000/- passed Assessment Order making addition of Rs.3,55,000/- holding that the amount of Rs.3,55,000/- received from the wife of the assessee could not be established to be genuine.

15. Aggrieved, the assessee filed appeal before the ld. CIT(A) who deleted the addition of Rs.3,55,000/-. While doing so, the ld. CIT(A) has also held at para 6 that the amounts received from Ram Milan Singh of Rs.12,50,000/- has been examined by the AO and accepted as genuine. The ld. CIT(A) has also accepted the fact during the appellate proceedings that Smt. Nandini Singh has received an amount of Rs.3,00,000/- from Sh. Ram Milan Singh her grandfather-in-law and Rs.55,000/- from Sh. R.P. Gupta. Hence, the ld. CIT(A) has deleted the addition of Rs.3,55,000/- made by the Assessing Officer on account of the amount received from Smt. Nandini Singh. After

the matter came to a logical conclusion by the order of the ld. CIT(A), the Assessing Officer passed order u/s 154 of the Income Tax Act, 1961 on 30.03.2021 rectifying the Assessment Order dated 17.11.2017 even after passing of the order of the ld. CIT(A) in that case on 31.12.2018. The order dated 31.12.2018 of the ld. CIT(A) has examined the full receipt of the amount by the assessee as well as the addition made by the Assessing Officer. (Refer para 5 & 6 of the ld. CIT(A)'s order). Further, the provisions of Section 154 stipulates that the Assessing Officer is an empowered to rectify any mistake apparent from the record u/s 154(1) and as per Section 154(1A), the Assessing Officer is also not empowered to rectify any matter that has been considered and decided in any proceeding by way of appeal. Since, in the instant case, the rectification undertaken by the Assessing Officer has already been an issue considered and decided by the ld. CIT(A), the action of the Assessing Officer rectifying the addition u/s 154 of the Income Tax Act, 1961 cannot be held to be legally valid.

16. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 24/04/2024.

Sd/-

(Anubhav Sharma)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 24/04/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR