IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER

आ.अ.सं/.I.T.A No.5944/Del/2024
निर्धारणवर्ष/Assessment Year: 2015-16

BAANI LANDBASE PVT LTD., Corporate One, Ground Floor, Plot No.5, District Center, Jasola, Delhi. PAN No.AADCB0237E	बनाम **Vs.**	DCIT, Circle-4(2), Central Revenue Building, I.P. Estate, Delhi.
अपीलार्थी **Appellant**		प्रत्यर्थी/**Respondent**

Assessee by	Shri Sumit Singh, CA & Shri Praveen Goel, CA
Revenue by	Shri Ajay Kumar Arora, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	05.08.2025
उद्घोषणाकीतारीख/Pronouncement on	30.10.2025

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the Assessee against the order of the Ld. CIT(Appeals)-NFAC, Delhi dated 23.10.2024 for the AY 2015-16 arising out of the rectification order passed u/s 154 of the I.T. Act. The assessee in its appeal raised the following grounds:

1. *"1.1 That the Ld. CIT(A) erred in passing the order, upholding the actions of the Ld. AO, without granting proper opportunity of being heard to the Appellant, by declining request for adjournment in respect of scheduled hearing on 05.12.2022.*

1.2 That the Ld. CIT{A) erred in law in holding that the failure of Ld. AO to issue Notice of Demand u/s 156 of the Act along with the impugned order u/s 154 constitutes technical lapse curable u/s 292B of the Act.

2. *That on facts and in law the Ld. Commissioner of Income Tax (Appeals) failed to consider and appreciate that the impugned order passed by Ld. AO u/s 154/143(3) of the Act dated 02.03.2022 is bad in law, ought to be quashed , for the following reasons: (i) That the impugned order passed by Ld. AO, based on a singular notice, issued during COVID duly complied with, without allowing proper opportunity of being heard, is against the principle of natural justice, (ii) That the impugned order has been passed without specifying the mandatory DIN on the face of the order; (iii) That the proceedings u/s 154 of the Act initiated vide Notice dated 26.04.2021 do not constitute mistake apparent from record, for the reason that the same issue was examined during assessment proceedings and constitutes change of opinion; (iv) That the addition made by the Ld. AO is not pursuant to mistake apparent from record particularly as Ld. AO had issued Notice u/s 148 of the Act dated 30.06.2021 for the reassessment.*

3. *That without prejudice to the aforesaid grounds of Appeal it is contended on merits, that the Ld. AO while making the impugned addition of Rs. 3,56,75,993/-, failed to consider and appreciate that the method of Accounting regularly followed had been accepted by Revenue in accordance with which Appellant claimed deduction based on actual expenditure incurred in proportion to area sold.*

4. *That the appellant craves, leave to add, alter, amend, substitute, forgo, any or all the grounds of appeal before or at the time of hearing."*

2. Ld. Counsel for the assessee, at the outset, submitted that in this case assessment was completed u/s 143(3) on 28.12.2017. Subsequently notice u/s 148 was issued on 30.06.2021 which is placed at page 33 of the PB along with the approval and reasons recorded for reopening the assessment which are placed at pages 34 to 36. Ld. Counsel referring to page 35 of the Paper Book which are the reasons recorded for reopening of assessment submitted that the AO proposed to reopen the assessment on the ground that a sum of Rs.3,56,75,993/- has escaped assessment. Ld. Counsel submitted that the basis for coming to such conclusion was stated in the reasons that the assessee company has created a provision of Rs.9.25 crores for construction expenses by passing a general entry on 31.03.2014, the assessee has claimed an amount of Rs.4,12,38,088/- on account of provision for expenses disallowed last year now allowed. Ld. Counsel submitted that subsequently the reassessment proceedings were dropped on 30.07.2022 which intimation is placed at page 39 of the Paper Book, wherein the AO had stated that the reasons mentioned for reopening of assessment pertains to the provision for expenses and the same are not falling under the definition of “asset” and therefore it is not a fit case for issuance of notice and accordingly the reopening proceedings were dropped.

3. Ld. Counsel for the assessee further submitted that having dropped the reassessment proceedings which were initiated u/s 147 of the Act, the Assessing Officer issued notice u/s 154 to rectify the assessment order for the very same reasons for which the assessment was sought to be reopened u/s 148 of the Act. The Ld. Counsel submitted that the 154 notice is placed at pages 1 to 4 of the Paper Book. Ld. Counsel for the assessee submitted that whether the provision for expenses disallowed in earlier years cannot be claimed for previous year, requires analysis of a legal issue and cannot be treated as a mistake apparent on record. An issue that necessitates a debate on the interpretation of the provision of law in the light of available facts cannot form a mistake apparent from records for which provisions of section 154 can be invoked. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of CIT vs. Keshri Metal Pvt. Ltd. (104 Taxman 360) (SC). Ld. Counsel for the assessee further submitted that the Hon'ble Supreme Court in the case of T.S. Balaram, ITO vs. M/s Volkart Bros. (82 ITR 50) (SC) held that a mistake apparent on record must be an obvious and patent mistake and not some which can be established by a long drawn process of reasoning on points on which there may be conceivably two opinions. Ld. Counsel for the assessee further placing reliance on the decision of the Apex Court in the case of CIT vs. Hero Cycles

Pvt. Ltd. (228 ITR 463) submitted that the Hon'ble Apex Court held that "a point which was not examined on facts or in law cannot be dealt with as a mistake apparent on record". Reliance was also placed on the decision of the jurisdictional High Court in the case of CIT vs. Hindustan Cycles & Tubes Ltd. (147 Taxman 555) and the Hon'ble Madras High Court in the case of CIT vs. MRM Plantation Pvt. Ltd. (240 ITR 660).

4. On the other hand, the Ld. DR strongly supported the orders of the authorities below.

5. Heard rival contentions, perused the orders of the authorities below and the case laws relied on. In this case the assessment u/s 143(3) was completed on 28.12.2017 determining the loss of the assessee at Rs.2,04,16,710/- under normal provisions of the Act and book profits u/s 115JB at Rs.1,75,39,634/-. Subsequently notice u/s 148 was issued on 30.06.2021 along with the following reasons for reopening of assessment u/s 147 of the Act:

Reasons recorded u/s 147 of the ANNEXURE case of M/s BAANI LANDBASE PRIVATE LIMITED - PAN AADCB0273E – A.Y. 2015-16

1. **Brief of the case:** Assessment in this case was completed u/s 143(3) of the I T Act on 28/12/2017, wherein the income of the assessee company was assessed at Rs. 2,04,16,710/-.

2. **Details of information and analysis:** In the computation of income, the assessee has claimed an amount of Rs. 4,12,38,088/- on account of *Provision for Expenses disallowed last year now allowed*. The assessee company had created a provision of Rs. 9,25,00,000/- for construction expenses by passing a journal entry on 31.03.2014. The assessee had shown receivable of Rs. 2,61,34,720/- in AY 2014-15, leaving a balance amount of Rs. 6,63,65,280/-. The assessee further contended that it sold an area of 66,223 sq.ft. in FY 2013-14 out of total area of Rs. 106,574 sq.ft. Accordingly, the assessee disallowed Rs. 4,12,38,088 (6,63,65,280 × 66,223/106,574) in AY 2014-15 and the same was allowed in AY 2015-16.

3. **Enquiries made by the AO:** From the perusal of records, it is seen that the assessee has not furnished any basis on which the provision for construction expenses of Rs. 9,25,00,000/- was created. As per the submission of the assessee, out of total area of 106,574 sq.ft., 66,223 sq.ft. was sold during FY 2013-14, 8,932 sq.ft. was sold during FY 2014-15, 14,187 sq.ft. was capitalized by the assessee under the head Investment and 9,402 sq.ft. was transferred to fixed asset for using the same for own business. Balance 7,830 sq.ft. was shown as a part of closing stock. Since the revenue of only 8,932 sq.ft. was offered by the assessee as business income, only the proportionate provision disallowed in the previous year can be claimed against the revenue of current year. Thus the amount allowable for AY 2015-16 will be Rs. 55,62,095 (Rs. 6,63,65,280*8,932/106,574).

4. **Findings of the AO:** In view of above, for the year under consideration the sum of **Rs. 3,56,75,993/-** (4,12,38,088 — 55,62,095) has escaped assessment and is required to be added back for computing the total income of the assessee.

5. **Applicability of the provisions of Section 147/ 151 to the facts of the case:** In this case, assessment was completed u/s 143(3) of the IT Act, 1961 on 28.12.2017. Since 4 years from the end of relevant year has not expired in this case, the only requirement to initiate proceedings u/s 147 of the Act is reason to believe that the income for the year under consideration has escaped assessment.

This case is within 4 years from the end of the assessment year under consideration. Hence, necessary sanction to issue the notice u/s 148 has been obtained separately from Additional/ Joint Commissioner of Income Tax as per the provisions of Section 151 of the Act.

The due date for issuing notice u/s 148 of the IT Act, 1961 for AY 2015-16 was 31.03.2020 (4years from the end of relevant assessment year). However, considering the COVID-19 pandemic situation, CBDT issued Notification No. 35/2020 dated 24.06.2020 read with Ordinance dated 31.03.2020 which provided for extension in due date for issuing of notice u/s 148 from 31.03.2020 to 31.03.2021 and other notifications for extension due date issued by the CBDT also. Thus, this notice may be taken as issuance of notice as per prescribed time limit under Section 149(1)(b) of the IT Act, 1961.

6. Subsequently by order dated 30.07.2022 the AO dropped the reopening proceedings holding that this is not a fit case for issue of notice u/s 148 of the Act observing as under:

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
CIRCLE 4(2), DELHI

To,	
BAANI LANDBASE PRIVATE LIMITED N-71, PANCHSHEEL PARK NEW DELHI 110017,Delhi India	

PAN:	Assessment Year:	Dated:	DIN & Order No :
AADCB0237E	**2015-16**	**30/07/2022**	**ITBA/COM/F/17/2022-23/1044346495(1)**

Sir/ Madam/ M/s,

Subject: Proceedings u/s 148A(d) in consequence to Hon'ble SC Order dated 04.05.2022 - Order

Background

In this case, assessment order was completed u/s 143(3) of the I T Act on 28/12/2017, wherein the income of the assessee company was assessed at Rs. 2,04,16,710/-.

2. Information received

As per the reason recorded by the AO and information has been received from audit that assessee has claimed an amount of Rs. 4,12,38,088/- on account of Provision for Expenses disallowed last year now allowed. The assessee company had created a provision of Rs. 9,25,00,000/- for construction expenses by passing a journal entry on 31.03.2014. The assessee had shown receivable of Rs. 2,61,34,720/- in AY 201415, leaving a balance amount of Rs. 6,63,65,280/-. The assessee further contended that it sold an area of 66,223 sq.ft. in FY 2013-14 out of total area of Rs. 106,574 sq.ft. Accordingly, the assessee disallowed Rs. 4,12,38,088 (6,63,65,280 × 66,223/106,574) in AY 2014-15 and the same was allowed in AY 2015-16. Since, the revenue of only 8,932 sq.ft was offered by the assessee as business income, only the proportionate provision disallowed in the previous year can be claimed against the revenue of current year. Thus the amount allowable for AY 2015-16 will be Rs. 55,62,095 (Rs. 6,63,65,280*8,932/106,574). Therefore, sum of Rs. 3,56,75,993/- (4,12,38,088 — 55,62,095) may be treated as escaped income during the year under consideration.

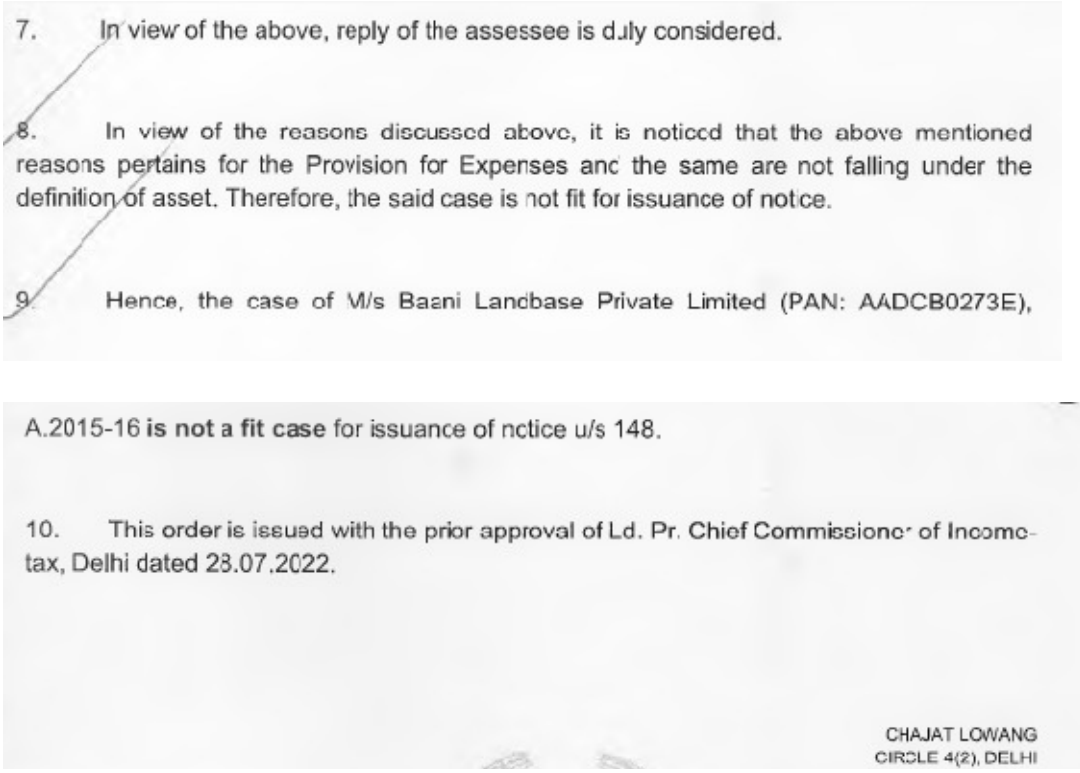
3. In view of the above, notice u/s 148 of the IT Act was issued on 30.06.2021 and duly served upon assessee at registered email id through ITBA module after obtaining approval from the Competent Authority on 30.06.2021.

4. Further, in compliance to the judgement dated 04.05.2022 of the Hon'ble Supreme Court in the case of Union of India & Ors. Vs Ashish Agarwal (Civil Appeal No. 3005/2022), the assessee was provided with the information / material relied upon by this office which suggests that income for the relevant year has escaped assessment and was given an opportunity to file its response.

5. The assessee was provided with the information/material relied upon by this office letter dated 30.05.2022 and duly served upon assessee through ITBA module and assessee company was asked to furnish reply within two weeks regarding why reassessment u/s 147 of the I.T. Act shall not be made in its case on the basis of information which suggests that income chargeable to tax has escaped assessment in this case.

6. In response, the assessee submitted his response dated 13.06.2022 in which the assessee has submitted the following:

1. *Vide letter dated 1306.2022 assessee has requested for adjournment for 30 day.*
2. *Objection in respect of limitation of 148/148A. The issue of notice u/s 148 on date 23/04/2021 which has been held to be show cause notice u/s 148A(b) has to be examined as per provisions of Sec 149 of I.T. Act since the Hon'ble Supreme Court has held that defences of Sec 149 will be available to the assessee. Therefore, these notices are time barred and bad in law.*



7. In view of the above, reply of the assessee is duly considered.

8. In view of the reasons discussed above, it is noticed that the above mentioned reasons pertains for the Provision for Expenses and the same are not falling under the definition of asset. Therefore, the said case is not fit for issuance of notice.

9. Hence, the case of M/s Baani Landbase Private Limited (PAN: AADCB0273E), A.2015-16 **is not a fit case** for issuance of nctice u/s 148.

10. This order is issued with the prior approval of Ld. Pr. Chief Commissioner of Income-tax, Delhi dated 28.07.2022.

CHAJAT LOWANG
CIRCLE 4(2), DELHI

7. Subsequently the Assessing Officer issued notice u/s 154/155 of the Act dated 26.04.2021 stating as under:

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
CIRCLE 4(2), DELHI

To,	
BAANI LANDBASE PRIVATE LIMITED N-71, PANCHSHEEL PARK NEW DELHI 110017,Delhi India	

PAN:	Assessment Year:	Dated:	DIN & Notice No :
AADCB0237E	**2015-16**	**26/04/2021**	**ITBA/COM/F/17/2021-22/1032675164(1)**

Sir/ Madam/ M/s,

Subject: Proceedings under section 154 - Notice

Notice u/s154/155 of the Income Tax Act, 1961

1. The assessment u/s 143(3) of IT Act, 1961 dated **28.12.2017**for assessment year **2015-16** made requires to be amended as there is a mistake apparent for the record within the meaning of Section 154/155 of the Income-tax Act, 1961. The rectification of the mistake, as per particulars given below will have the effect of enhancing the assessment/reducing the refund/increasing your liability.

2. If you wish to be heard, you are requested to appear through an authorized representative in my office on **03.05.2021** at **11.30 AM** alternatively you may send a written reply so as to reach me on or before the date mentioned above. Failing, it will be presumed that you have nothing to say and action will be taken as per IT Act.

Mistake apparent for the record

1. Claim regarding provision for expenses disallowed last year

The assessee in the computation of income has reduced sum of Rs. 4,12,38,088/- on account of "Provision for expenses disallowed last year now allowed".

As per the details submitted the assessee company on 31/03/2014 has passed a journal entry in its books of accounts, wherein a provision was created for Construction Expenses of Rs. 9,25,00,000/-. Further, the assessee has shown following expenses, as receivable against unsold area :

ECC Receivable against unsold Area	Rs. 40,71,897
EDC Receivable against unsold Area	Rs. 1,90,88,125
IDC Receivable against unsold Area	Rs. 21,40,695
LabourCess Receivable against unsold Area	Rs. 8,34,003
Total	Rs. 2,61,34,720

The assessee has contended that in A.Y. 2014-15 it has adjusted the above two figures, i.e. provision created and amount receivable against unsold area, as under

Provision for expenses as on 31/03/20014	Rs. 9,25,00,000
Less : Expenses receivable	Rs. 2,61,34,720
	Rs. 6,63,65,280

This provision was distributed between the Total Area and Area sold in the following manner :

Total Area	106,574

Area sold in F.Y. 2013-14	66,223
6,63,65,280 X 66,223/106,574 = 4,12,38,088	

The assessee has stated that this amount of Rs. 4,12,38,088/- was disallowed in A.Y. 2014-15 and has been allowed during the year under consideration, i.e. A.Y.2015-16. The copy of the documents furnished by the assessee, are annexed herewith for ready reference.

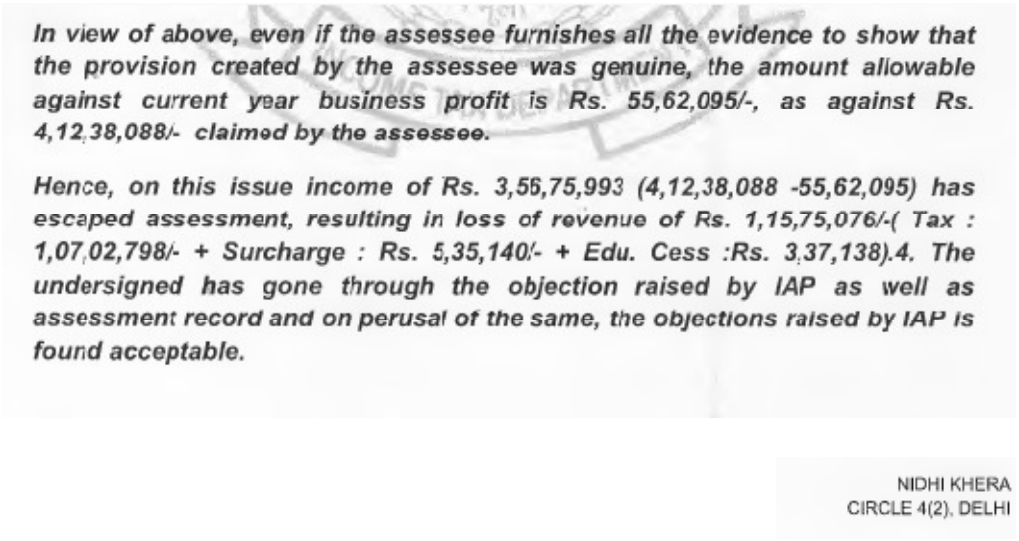
In this regard, it is seen that the assessee has created a provision for expenses of Rs. 9,25,00,0000/- on 31/03/2014, by passing a journal entry, but there is nothing on record to show that the corresponding expenditure has been incurred by the assessee during the year under consideration, i.e. during F.Y. 2014-15. Thus, primarily there is no basis to allow the above expenditure during the year under consideration.

Further, even if the assessee furnishes evidence that the corresponding construction expenditure of Rs. 9,25,00,000/- was incurred by him during the F.Y. 2014-15, even then the deduction of Rs. 4,12,38,088/- as claimed by the assessee in the computation of income is not allowable due to the following reasons :

- *Theassessee has not furnished any basis on which this provision for construction expense of Rs.9,25,00,000/- was created by it.*
- *However, if the provision is genuine, even then only amount proportionate to the area sold during the year should be allowed as business expense and not the entire provision. As per the submission made by the assessee out of total area of 1,06,574 sq. feet, 66,223/- sq. feet was sold during the F.Y. 2013-14, out of remaining 8,932 sq. feet has been sold during the year, 14,187 sq. feet has been capitalized by the assessee under the head Investment and 9,402 sq. feet was transferred by the assessee to fixed asset for using the same for own business. Balance 7,830 sq. feet has been shown as part of closing stock. The relevant schedule of the Audited Balance Sheet is annexed herewith for ready reference.*
- *Since revenue of only 8,932 sq. feet has been offered by the assessee as business income, only the proportionate provision disallowed in preceding year can be claimed against current year revenue. Thus, the amount allowable during the year under consideration will be as under:*

Total provision after adjusting receivable (as shown by the assessee)	*Rs. 6,63,65,280*
Total Area	*106,574*
Area sold in F.Y. 2014-15	*8,932*
Amount allowable = 6,63,65,280 X 8,932/106,574	*Rs. 55,62,095*

It is pertinent to mention that the expense proportionate to the area transferred to investment and the area transferred to fixed asset has to be capitalized under the respective head and cannot be claimed as revenue expense.



In view of above, even if the assessee furnishes all the evidence to show that the provision created by the assessee was genuine, the amount allowable against current year business profit is Rs. 55,62,095/-, as against Rs. 4,12,38,088/- claimed by the assessee.

Hence, on this issue income of Rs. 3,56,75,993 (4,12,38,088 -55,62,095) has escaped assessment, resulting in loss of revenue of Rs. 1,15,75,076/-(Tax : 1,07,02,798/- + Surcharge : Rs. 5,35,140/- + Edu. Cess :Rs. 3,37,138).4. The undersigned has gone through the objection raised by IAP as well as assessment record and on perusal of the same, the objections raised by IAP is found acceptable.

NIDHI KHERA
CIRCLE 4(2), DELHI

8. On perusal of the notice issued u/s 154 of the Act we observed that the AO at the beginning in paragraph 1 stated that assessment made u/s 143(3) requires to be amended as there is a mistake apparent on record within the meaning of section 154 of the Act. We also observed that in the last paragraph at page 4 of the very said notice the AO stated that on this issue income of Rs.3,56,75,993/- has escaped assessment resulting in loss of Revenue. Therefore, it is evident from reading of the notice itself that the AO having dropped the proceeding u/s 148 proceeded to invoke the provisions of section 154 of the Act proposing to rectify the assessment order on the same reasons on which 148 notice was issued to the assessee. The whole exercise of the AO in issuing notice u/s 154 appears to be on the basis of the audit objection and nothing more. On careful reading of the show cause notice and the proposal made in the 154 notice by

the AO can never be said to be an apparent mistake crept in the assessment order.

9. The constitution bench of Hon'ble Supreme Court in its land mark judgment of *Hari Vishnu Kamath vs. Syed Ahmed Ishaque AIR 1955 SC 233*, quoted the observation of *Chagla, CJ. In Batuk K. Vyas vs. Surat Borough Municipality AIR 1953 Bom. 133*, that no error can be said to be apparent on the face of the record if it is not manifest or self evident and requires an examination or argument to establish it.

10. In *Satya Narayan Laxminarayan Hegde vs. Mallikarjun Bhavanappa Triumale AIR 1960 SC 137*, the Hon'ble Supreme Court stated as to what can be an error apparent on the face of the record as under:

> *"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record". In the case of CIT vs. Keshri Metal Pvt. Ltd. (supra), the Hon'ble Supreme Court held as under:*
>
> > *"under the provisions of section 154 there has to be a mistake apparent from the record. In other words a look at the record must show that there has been an error and that error may be rectified. The Ld. Counsel for the Revenue has not been able to specify us that it shows any apparent error from the record. Reference to documents outside the record and the law is impermissible when applying the provisions of section 154".*

11. The Hon'ble jurisdictional High Court in the case of CIT vs. Hindustan Cycles and Tubes Ltd. (supra) held as under:

> *"The provision of section 154 of the Act clearly indicate that it is only a mistake apparent on record which can be rectified by the AO and accordingly could amend the order of assessment".*

12. Determination of controversial or debatable issues in exercise of this rectification powers would not be permissible. The Hon'ble Madras High Court in the case of MRM Plantations Pvt. Ltd. (supra) held as under:

> *"The mistake is not to be a mistake which requires in depth proving to discover, but it is a mistake which is apparent from the record. The power conferred by this provision is only to unable the authorities to rectify the "Apparent" mistakes in the record. The record referred to in the record which the authorities are required to examine for the purpose of rectifying the mistakes in the orders mentioned in sub clauses (a), (b) & (c) of section 154(1) of the Act".*

13. The ratios of all these decisions squarely apply to the assessee's case. Therefore, respectfully following the above decisions, we hold that 154 order passed by the AO dated 02.03.2022 is bad in law as the adjustment made in the 154 order is beyond the scope of the provisions of section 154 and it cannot be said to be a mistake apparent on record. Accordingly the order passed u/s 154 of the Act is hereby quashed.

14. In the result, appeal of the Assessee is allowed.

Order pronounced in the open court on 30.10.2025

(AVDHESH KUMAR MISHRA)	**(C.N. PRASAD)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 30.10.2025

**Kavita Arora, Sr. P.S.*

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI