INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 1993/Del/2021
(Assessment Year: 2013-14)

Grih Kalyan Kendra Board, Grih Kalyan Kendra, Samaj Sadan, Lodhi Road Complex, Delhi (Appellant) **PAN: AAAAG3556E**	Vs.	ITO, Ward-1(2), Delhi (Respondent)

Assessee by :	Ms. Rano Jain, Adv Ms. Mansi Jain, CA
Revenue by:	Shri Pradeep Gautam, Sr. DR
Date of Hearing	17/10/2022
Date of pronouncement	05/12/2022

O R D E R

PER ANUBHAV SHARMA, J. M.:

1. The present appeal has been preferred by the Assessee against the order dated 29.08.2019 of Ld. CIT(A)-40, New Delhi (hereinafter referred as Ld. First Appellate Authority) arising out of an appeal before it against the assessment order dated 04.02.2019 passed u/s 154 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the AO, ITO (Exemption), Ward-1(2), New Delhi (hereinafter referred as the Ld. AO).

2. Facts of the case is that the return of income' was filed on 31/10/2013. While processing the return under section 143(1), the CPC Bangalore did not allow the amount of Rs. 3,18,39,808/- claimed on account of amount deemed to have been applied to charitable or religious purposes in India during the previous year as per clause (2) of the Explanation to section 11(1). Further, an amount of Rs. 56,18,790/-

claimed as amount accumulated or set apart for application to charitable or religious purposes to the extent as is not exceed 15% of income derived from property held under trust under section 11(1)(a) was also not allowed as deduction. An application under section 154 was filed which was rejected. While rejecting the application under section 154, the Assessing Officer observed as under:

> *"The demand was outstanding as assessee neither claimed exemption u/s 11 and 12 nor claimed any other basic exemption benefits as shown in "Col No. B, C, and D" of other details of ITR at page 1 and 2 for Assessment Year 2013-14.*
>
> *In view of the above all and on verification from the 1TD System and also on perusal from the . 7R filed by assessee, it is seen that there is no error found in the order of the CPC which assessee have sought to be rectified.*
>
> *It is also observed that assessee itself offered the income for taxation in the ITR filed and did not claim the benefit of exemption u/s 11 & 12 of the Act vide scheduled Part-B of ITR and from the acknowledgement of ITR. Neither the assessee filed revised return of income within stability time-limit to justify its claim nor submit any query/response within specified time limit in response to notice/intimation u/s 143(1) of the Act issued by the CPC.*
> *Therefore the application u/s 154 of the assessee for A.Y. 2013-14 is hereby rejected."*

3. The assessee went in appeal before the CIT(A) and made elaborate submissions there. The CIT(A) dismissed the appeal of the assessee, relevant findings are at PG. 8 Para 4 onwards. The main reason given by him is that since the assessee had not made the claim of exemption under section 11 in its Return of income, it was not allowed in order u/s 143(1), and as such there is no infirmity in order u/s 154.

4. The assessee has now raised the following grounds of appeal:-

> *"1. That on the facts and circumstances of the case, the order dated as 04.02.2019 passed by the Assistant Director of Income Tax, CPC - Bangalore [hereinafter for the sake of brevity referred to as "The Ld. A.O."] under section 154 of*

the Income-tax Act, 1961 [hereinafter for the sake of brevity referred to as "The Act"] and as upheld by the Ld. Commissioner of Income-tax (Appeals) - 40 Delhi [hereinafter for the sake of brevity referred to as "The CIT (A)"] is bad at law and void ab initio.

2. *That on the facts and in circumstances of the case, the Ld. CIT(A) erred in upholding the Assessed income of Rs 374,58,598 being the Gross receipt as income and denied the followings application of section 11 of the Act while computing Total income :*

   a) *Amount of income applied for charitable purpose Rs 2,79,03,515*

   b) *Amount of income Deemed to have been Applied for charitable purpose Rs 39,36,293*

   c) *Amount Accumulate or set apart Rs 56,18,790*

3. *That on the facts and circumstances, the Ld. CIT(A) erred in the holding that the Appellant has not claimed the exemption u/s 11 of the Act.*

4. *That on the facts and circumstances, the Ld. CIT(A) erred in holding interest charged Rs 26,77,488 u/s 234B and Rs 4,12,780 u/s 234C."*

5. Heard and perused the record.

6. On behalf of the appellant it was submitted that the only issue in this case is the disallowance of Rs. 3,74,58,598/- claimed by the assessee under section 11, confirmed by the CIT(A). The assessee is a government Board registered under section 12A of the income tax Act. All along it had been filing its return of income claiming exemption under section 11 of the Act for the last many years and also later years. The exemption has been granted to it in various years. Referring to the paper book filed it was submitted that during the year under consideration while filing its return of income, (PB Pg. 21-33), inadvertently the particulars with regard to claim of benefit of registration u/s 12AA under the Act, in point B to Part A-GEN (PB Pg. 22) were wrongly filed as NO. Resultantly the exemption of Rs. 3,74,58,598/- intended to be claimed by the assessee (PB. Pg. 34), was not allowed to it by the CPC. An assessment

at an amount of Rs. 3,74,58,598/- was made by CPC u/s 143(1) of the Act. (Pg. 2 of CPC order).

7. It was submitted that on receiving frequent demand notices, on apprising by the assessee, CPC duly took cognizance of the grievance of the assessee and in its demand notice dt. 13.08.2019 (PB Pg. 38-40), asked assessee to upload certain documents in relation to registration under section 12A of the Act and allowance of exemption under section 11 (PB Pg. 40). The assessee tried to comply the same, however the CPC Portal having been closed, the documents could not be uploaded. Thereafter the assessee filed application under section 154 before the Jurisdictional A.O. (PB pg. 334) as on 30.08.2018. It is submitted that this was also in consonance with the procedure provided by the CPC in its order under section 143(1) of the Act. Refering to the order of the Assessing Officer dt. 04.02.2019 by which rectification application was dismissed the Ld. AR submitted that Ld. AO has made wrong observations that no claim under section 11 of the Act was made as from the acknowledgement of return (PB Pg. 21), it can be seen that the assessee had in fact claimed this exemption. The assessee did not file revised return as intimation is dt. 14.03.2015, when the stipulated time for revising the return had elapsed. Further this is also incorrect that the assessee had not apprised the authorities in this regard.

8. It was submitted that the assessee intended to claim exemption u/s 11 in its return of income, as is evident from the acknowledgement and computation of income (PB pg. 21, 33-34). This fact was duly taken care of by the CPC also (PB Pg. 40). After such cognizance of the fact of exemption u/s 11 by the assessee, from CPC itself, CIT(A) cannot say now that no such claim was made. Since the CPC Portal was closed by the, application was filed with the Jurisdictional A.O. with all the relevant documents. The A.O. as well as the CIT(A) on the basis of trivial inadvertence and technicality cannot allow the benefit to the assessee. Copies of return of income claiming exemption u/s 11 and intimations u/s

143(1) allowing exemption u/s 11 for A.Y. 2017-18 to 2020-21 are placed in PB Pg. 41- 332. Ld. AR relied CBDT Circular no 14(XL-35) dt. 11.04.1955 placed in PB Pg. 344-345, to submit that CBDT has directed officers of the department to give benefit to the assessee for which he is clearly entitled but omitted to have claimed.

9. Reliance is further placed on following case laws whereas per Ld. AR such technicalities have been ignored to give benefit to the assessee:

1. Anchor Pressing Private Limited (1986) 161 ITR 159 (SC)
2. TS Balaram Vs. Volkart (1971) 182 ITR 50 (SC)
3. CIT vs. Jai Parabolic Springs Ltd. (2008) 306 ITR 42 (Del)
4. Sh. Koshti Vs. CIT (2005) 276 ITR 165 (Guj)
5. Dhanesh Kumar Jain ITA 4657/Del/2018, dt. 10.12.2021
6. IECS Ltd. ITA 8503/Del/2019, dt. 08.09.2022
7. Jai Devi Ram Padia ITA 323/Del/2021, dt. 25.02,2022

10. On the other hand Ld. DR submitted that there is no error in the findings of Ld. Tax authorities below. It was submitted that in Return as filed exemption was not claimed so same could not be allowed by way of rectification.

11. Giving thoughtful consideration to the matter on record and submission it will be necessary to understand as to what is the scope of rectification of Mistakes under Section 154 of the Act and to if Ld. AO was justified to dismiss application on basis that mistake of not marking claim of benefit of registration u/s 12A under the Act, in point B to Part A-GEN was not a mistake apparent from record and liable to be entertained.

12. In this context it can be observed that the scope and ambit of power of rectification came to be considered and decided by the Supreme Court in **T. S. Balaram, ITO v. Volkart Brothers [1971] 82 ITR 50**. It was held in that case that the power of rectification of mistakes under section 154 of the Act is a very limited power which is restricted to rectification of mistakes apparent from the record. Besides, it must be a

mistake which is patent on the face of the record and does not call for detailed investigation of the facts or require an elaborate argument to establish it. It does not cover any mistake which may be discovered by a complicated process of investigation, argument or proof. The mistake sought to be rectified must be manifest and self-evident on the face of the record. It must be one which is apparent and not lurking, which is visible and not dormant, which can be seen and not hidden. It cannot be demonstrated to exist by relying upon materials outside the record. A decision on a debatable point of law or failure to apply the law to a set of facts which remain to be investigated cannot be corrected by way of rectification. The legal position is thus now settled that a mistake which is not obvious, patent and self-evident and mistake on which conceivably there can be two opinions cannot be rectified by way of rectification of mistake under section 154 of the Act. In other words, in the garb of exercise of the power of rectification under section 154 of the Act, the income-tax authorities cannot revise or review their order generally or reconsider the conclusions arrived therein on the facts before them at that time on the basis of new facts brought on record by the party seeking rectification or coming into possession otherwise, because the jurisdiction under section 154 is confined to rectification of mistakes apparent from the record.

13. Further Hon'ble Supreme Court of India in **Anchor pressings (P) Ltd. v. CIT 3 SCC 439** has held *that;*

> *"Rectification could only be justified on the ground of a mistake apparent from the record. If the record did not contain any material, it could not be said that the Income-tax Officer had committed a mistake in omitting to grant relief under s. 84."*

14. It was further held in the facts of that case that,;

> *"Although the jurisdiction under s 154 to rectify any mistake apparent from the record is wider than that provided under r. 1 of Order XLVII of the Code of Civil Procedure to rectify an error apparent on the face of the record, nonetheless there must be*

material to support the claim to relief under s. 84, and unless such material can be referred to, no grievance can be made if the Income-tax Officer refuses to rectify the assessment and refuses relief under s. 84."

15. As with regard to what is 'record' which is subject of rectification powers, Hon'ble Bombay High Court in **Gammon India Limited vs Commissioner Of Income-Tax 1995 214 ITR 50 Bom** has observed;

*"The expression "record" has not been defined in the Act. It has, therefore, to be construed and understood in the context in which it appears. Section 154 empowers the income-tax authorities to rectify mistakes which are "apparent from the record", "Record" in such a case would mean record of the case comprising the entire proceedings including documents and materials produced by the parties and taken on record by the authorities which were available at the time of passing of the order which is the subject-matter of proceedings for rectification. They cannot go beyond the records and look into fresh evidence or materials which were not on record at the time the order sought to be rectified was passed (see **Sri Pankaj Kumar Dasgupta v. State of Tripura [1990] 79 STC 409 (Gauhati**)*.

16. Hon'ble Madras High Court in **Commissioner Of Income-Tax vs M.R.M. Plantations (P.) Ltd. 1999 240 ITR 660 Mad**, dealing with question as to the scope of the "record" occurring in Section 154 of the Income-tax Act, 1961 has observed:

"Section 154 of the Act opens with the words "with a view to rectifying any mistake apparent from the record . . ." The term "record" as noticed earlier is not defined in the section or in the definition section of the Act. For determining the true scope of this provision and the meaning to be properly assigned to the term "record" it is necessary to keep in view the object of the provision and the nature of the power conferred on the authorities under that provision. These are the criteria which the Supreme Court adopted while considering the scope and effect of Section 263 of the Act and the meaning to be assigned to the word "record" used in that provision, in the case of CIT v. Shree Majunathesware Packing Products and Camphor Works [1998] 231 ITR 53. The object with which power is conferred by Section 154 is as stated in the marginal heading "rectification of mistake". The principal condition for exercising the power under Section 154 of the Act is the existence of a mistake in the record. The mistake is not to be a mistake which requires in-depth probing to discover, but is a

mistake which is "apparent" from the record. The power conferred by this provision is only to enable the authorities to rectify the "apparent" mistakes in the record. The record referred to is the record which the authorities are required to examine for the purpose of rectifying the mistakes in the orders mentioned in Clauses (a), (b) and (c) of Section 154(1) of the Act. The section does not either expressly or implicitly require that the authorities exercising power under this provision should limit their attention only to the order sought to be rectified."

17. Now, keeping aforesaid principles of law in mind, as the matter on record is considered it appears that in the case in hand the Ld. AO and also the Ld CIT(A) were both of view that as revised return is not filed the claim of exemption /s 10 read with section 12A cannot be sustained. A distinction needs to be made here between a revised return which is filed, before the Department completes assessment. A rectification, on the other hand, can be filed only after assessee receives an intimation Section 143(1) or assessment order is passed and intimated to the assessee. So rectification application is more appropriate a remedy when assessment is complete and assessee claims on the basis of the assessment record available with the Ld. AO, that there is a mistake apparent in the order arising from the assessment record and same be rectified.

18. What is important here in the case in hand is that the mistake was in the Part A of the return which calls for personal information of the assessee. Assessee was supposed to submit "YES" in the column in point B to Part A-GEN of the Return (page 22 of PB), meant to disclose date of approval/ registrations etc, to claim of benefit of exemption u/s 10 read with 12A of the Act. It seems that mistakenly "NO" was mentioned by the assessee and relevant information about registration etc. was shown as "NO".

19. However, in Part B of the return (page 23 of PB) under the head statement of income for the period ended on 31/3/2013 income from other sources is shown at Rs 3,74,58,598/- and in deductions at relevant

places amount applied for charitable/ religious places and amount accumulated or set apart have been disclosed, with total deduction claim shown at Rs 3,74,58,598/-.

20. At the same time in computation of income, which was part of the Return, as available at Page no 34 of PB, Amount applied to charitable purposes, amount deemed to be applied and accumulated amount has been shown at Rs 3,74,58,598/- and accordingly Gross Total Income is shown as NIL.

21. Further, the matter of fact is that the CPC while considering the return of the assessee had issued an notice dated 13.08.2019 for payment of outstanding demand for Assessment Year 2013-14 in which it was mentioned that there was an outstanding demand. At the same time it was mentioned that if the assessee does not agree with the computation of the income he can seek online rectification by providing the correct data. At page No. 36 and 37 reminders issued by CPC are available where demand identification No. 20142013370660188 40T is mentioned and outstanding demand of Rs. 1,42,46,510/- is shown. The assessee has placed at page No. 40 of the paper book annexure-A which is part of the intimation wherein reason for the demand raised has been mentioned that the assessee has not provided details of 12A/ 12AA registration and other details, but exemption u/s 11 is claimed. It mentioned that this can be resolved by filing an online rectification and correcting the details.

22. The aforesaid discussion has helped this bench to reach a conclusion that the primarily the mistake was one which was in the personal information of the assessee. Such a mistake is always rectifiable at any stage.

23. Then it can be observed that computation of income and return filed together form part of the assessment record. It is not so that the assessee has not claimed exemption at all. The claim was there in the

computation of income, with complete details available with regard to nature of income earned and how the income was utilized in accordance with the law to claim the exemption. There was material on record to support the claim of relief u/s 11 of the Act. It is not the case where the record in the form of Computation, being part of Return, did not contain any material to show there was claim of exemption. Thus acutully it cannot be said that a new or fresh claim was being raised without revising the return.

24. Even the intimation issued calling for payment of demand and it's annexure A, as discussed, above establish that the nature of mistake was such that it could have been rectified u/s 154 of the Act itself.

25. Thus, there is no doubt in the mind of the bench that the ld Tax Authorities below have fallen in error in not taking into consideration the rectification application. The nature of mistake, as discussed, is one which falls into the definition of mistake apparent from the record and was liable to corrected without any requirement of a revised return.

26. Consequently, the ground No. 1 deserves to be allowed. The matter requires to be restored to the files of the ld AO to consider the rectification application of the assessee and consider the claim of exemption of assessee u/s 11 of the Act as per the information available on record or to be further verified from record. **Accordingly, the appeal of the assessee is allowed.**

Order pronounced in the open court on 05/12/2022.

-Sd/-	-Sd/-
(SHAMIM YAHYA)	(ANUBHAV SHARMA)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated: 05/12/2022
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
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