

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

BEFORE SHRI N. K. SAINI, ACCOUNTANT MEMBER

ITA No. 568/Del/2017 : Asstt. Year : 2010-11

ITO Ward-2(4), Room No. 2409, E-2 Block E-2 Block, Dr. S.P. Mukherjee Civic Centre New Delhi	Vs	National Meat and Polutry Processing Board Room no. 118B, Panchsheel Bhawan August Kranti Road New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAAAN7041H		

**Assessee by : Sh. V.K.Sabharwal & Sh. Ravi Kapoor, Advt.
Revenue by : Sh. Amrit Lal, Sr. DR**

Date of Hearing : 18.05.2017	Date of Pronouncement : 28 .06.2017
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ORDER

Per N. K. Saini, AM:

This is an appeal by the department against the order dated 08.11.2016 of Id. CIT(A)-40, New Delhi.

2. The only effective ground raised in this appeal reads as under :

“ On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that disallowing advance as application is apparent from record which was duly rectified by the Assessing Officer u/s 154 after giving opportunity to the assessee.”

3. Facts of the case in brief are that the assessee is a society registered on 26.03.2009 under the Societies Registration Act, 1860. The assessee society is also registered u/s 12A of the Income Tax Act, 1961 (hereinafter referred to as the Act) vide order dated 5.11.2009. The assessee filed the return of income on 24.12.2010 declaring nil income which was processed u/s 143(1) of the Act and later on the case was selected for scrutiny. The AO framed the assessment on 14.2.2013 u/s 143(3) of the Act at nil income by making the remarks that the activities of the assessee society were charitable in nature within the meaning of section 2(15) of the Act and there was no violation of section 13 of the Act. Later on the AO rectified the assessment vide order dated 26.3.2015 passed u/s 154 of the Act by observing as under :-

“Assessment in this case has been completed on 14.02.2013 at total income of Rs. NIL thereby creating demand of Rs.NIL. Assessee in its computation of taxable income treated advance to IICPT amounting Rs. 36,00,000/- and other advance recoverable amounting Rs. 114835/- as application of income. As the advance is not an application of income, the amounting should have been disallowed and charged to tax. The mistake is non assessment of income amounting to Rs. 37,14,835/-. Notice u/s154 issued on 05.09.2014.but assessee not filed the reply of the above notice. Again notice u/s 154 issued on 18.03.2015 as per final opportunity for reply of the above matter should be rectified. The assesses has not filed the reply on above matter till date. On perusal of record, accordingly is rectified u/s 154 of the IT Act, 1961 as the mistake apparent from record.

accordingly.

Income as per Return of Income

Rs. 2,13,85,549/-

Less set apart @15%

Rs. 32,07,832/-

Balance (85%)

Rs. 1,81,77,717-

Expenditure

Rs. 2,05,48,536/-

Disallowed Amount as discussed above

Rs. 37,14,835/-”

4. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted that the assessee had paid the amount of Rs. 36,00,000/- to IICPT (Indian Institute of Crop Processing Technology) for installation of laboratory for meat and meat product, to meet the required domestic and international standards and the relevant documents supporting the payment of Rs. 36,00,000/- were furnished. It was further stated that the laboratory was subsequently set up in the financial year 2010-11 and put to use to meet the objectives of the society which was evidenced by the financial statements of the subsequent financial year and the issue was settled by the decision of the Hon'ble Dehi High Court in the case of Director of Income Tax (Exemption) Vs. Maharaja Agarsen Technology Education Society [2011] 196 Taxman 528 (Delhi) and the Hon'ble Supreme Court in the case of S.RM.M.CT.M. Tiruppani Trust v. CIT [1998] 230 ITR 636 and therefore the advance payment made for capital expenditure for the main object of the society was an application of income. It was further submitted that the computation made by the AO u/s 154 of the Act was grossly incorrect, therefore, the order of the AO deserves to be set aside.

5. The ld. CIT(A) after considering the submissions of the assessee held that section 154 of the Act could not have been invoked for disallowing the advances given as application of income. The relevant findings are given in para 4.7 to 4.12 of the impugned order which read as under :-

“4.7 In the case under consideration, the issue regarding allowability of advance given as application of income has been presumably examined by the Assessing Officer during the assessment proceedings under section 143(3) and allowed as application since a very clear computation has been given in the assessment order. In the appellate proceedings, the appellant, in support of the claim of allowability has relied on the judgment of the Hon'ble Delhi High Court in the case of **Director of Income Tax (Exemptions) vs. Maharaja Agarsen Technical Education [2011] 196 Taxman 528** wherein the Hon'ble Court has held that amount paid as advance for purchase of land during the relevant assessment year was towards acquisition of capital assets in accordance with section 11. In this case the balance consideration was paid in the immediately next year and the assessee had obtained possession of property and had also got irrevocable power of attorney executed in its favour by the seller of the property. The appellant has also relied on the decision of the Hon'ble Supreme Court in the case of **S.R.M.C.T.M. Tiruppani Trust v. CIT [1998] 230 ITR 636**.

4.8 Section 154 provides for rectification of mistake which is apparent from record. The Hon'ble Supreme Court in **T.S. Balaram, ITO vs. Volkart Brothers & others (SC) 82 ITR 50** have held that mistake must be obvious and patent and not something which can be established by a long drawn process of reasoning on points on which there may be two opinions. The Hon'ble Court also held that a decision on a debatable point of law is not a mistake apparent from record. The appellant has also relied on the case of **Hotz Hotels Pvt. Ltd. vs. CIT (2001) 118 Taxman 94 (Delhi)** wherein the Hon'ble Court have held

that-

5. A bare look at section 154 makes it clear that a mistake apparent from the record is rectifiable. In order to attract the application of section 154, the mistake must exist and the same must be apparent from the record. The power to rectify the mistake, however, does not cover cases where a revision or review of the order is intended. 'Mistake' means to take or understand wrongly or inaccurately, to make an error in interpreting, it is an error, a fault, a misunderstanding, a misconception. 'Apparent' means visible, capable of being seen, obvious, plain. It means open to view, visible, evident, appears, appearing as real and true, conspicuous, manifest, obvious, seeming. A mistake which can be rectified under section 154 is one which is patent, which is obvious and whose discovery is not dependent on argument or elaboration. In our view amendment of an order does not mean obliteration of the order originally passed and its substitution by a new order...

...What the revenue intends to do in the present case is precisely the substitution of the order which, according to us, is not permissible under the provisions of section 154 and, therefore, the Tribunal was not justified in holding that there was mistake apparent on the face of the record...

...In order to bring in application under section 154, the mistake must be 'apparent' from the record. Section 154 does not enable an order to be reversed by revision or by review, but permits only some error which is apparent on the face of the record to be corrected. Where an error is far from self-evident, it ceases to be an apparent error. It is, no doubt, true that a mistake capable of being rectified under section 154 is not confined to clerical or arithmetical mistakes. On the other hand, it does

not cover any mistake which may be discovered by a complicated process of investigation, argument or proof."

4.9 *There are other conflicting judgments of High Courts where advance paid to supplier has not been treated as application based on the facts of the case. In the case of CIT vs. Shree P. Subramoniam Religious Trust (2009) 179 Taxman 144 (Ker.), the Hon'ble Kerala High Court, on the facts of the case, held that advance even to supplier cannot be treated as application.*

4.10 *Based on the discussion above, it is clear that-*

i. Whether advance paid can be treated as application or not is a debatable issue which is based on the facts of the case where it will have to be seen in subsequent years whether the advance given has been utilized for the purpose for which it was given, the purpose being advancement of the objects for which the charitable organization was set up.

ii. In the assessment order under section 143(3), while computing the income, the Assessing Officer has specifically allowed both the advances given as application of income. It can, therefore, be presumed that during the assessment proceedings this issue has been examined by the Assessing Officer.

iii. The fact that whether advance paid can be treated as application of income or not is a debatable issue is apparent since there are conflicting decisions of various Hon'ble High Courts on the issue.

4.11 *In view of the above and relying on the decision of the Hon'ble Supreme Court in the case of T.S. Balaram, ITO vs. Volkart Brothers & others (supra) and decision of the Hon'ble Delhi High Court in the case*

*of Hotz Hotels Pvt. Ltd. vs. CIT (supra), it is held that section 154 cannot be invoked for disallowing advance given as application of income. Ground Nos. 1 to 3 of the appeal are, hence, **allowed**.*

4.12 *Since the grounds of appeal challenging proceedings under section 154 for disallowing advance given as application of income have been allowed on technical reasons, I see no reason to adjudicate other grounds of appeal which have become infructuous. These grounds of appeal are, therefore, **dismissed**.*

Now the department is in appeal.

6. The Ld. DR strongly supported the order of the AO and submitted that since there was a mistake apparent from the record, therefore, AO was justified in making the rectification u/s 154 of the Act. In his rival submissions, the Ld. Counsel for the assessee strongly supported the order passed by the Ld. CIT and further submitted that the AO after making the proper inquiry and applying his mind considered the advance of Rs. 36,00,000/- given to IICPT and other advances of Rs. 1,14,835/- for the procurement of installation required for the purpose of set up of laboratory, as an application of income for the purpose of being charitable activities and the said view was taken as per the guidelines laid down by the Hon'ble Supreme Court in the case of S.RM.M.CT.M Tiruppani Trust vs. CIT (Supra). Therefore, the Ld. CIT(A) rightly held that there was no mistake apparent from the record.

7. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it appears that the AO after making

proper inquiries considered the amount of the advance given for purchase of the equipment which was to be installed in the laboratory, as an application of the income to meet the objectives of the society, the view taken by the AO was inconsonance with the judgments of Hon'ble Jurisdictional High Court in the case of DIT (Exemption) vs. Maharaja Agarsen Technical Education (Supra) and of the Hon'ble Supreme Court in the case of S.RM.M.CT.M., Tiruppani Trust vs. CIT (Supra), so there was no mistake apparent from the record.

8. In my opinion, the Ld. CIT(A) passed a well-reasoned order which does not require any interference. In that view of the matter, I do not see any merit in this appeal of the department.

9. In the result, appeal of the department is dismissed.

(Order Pronounced in the Court on 28/06/2017)

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 28/06/2017

Binita

Copy forwarded to:

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

ASSISTANT REGISTRAR

		Date	<u>Initial</u>	
1.	Draft dictated on	22 /06/2017		
2.	Draft placed before author	23/06/2017		
3.	Draft proposed & placed before the second member			
4.	Draft discussed/approved by Second Member.			
5.	Approved Draft comes to the Sr.PS/PS			
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			