आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE MS. SUSHMA CHOWLA, JM AND
SHRI ANIL CHATURVEDI, AM

आयकर अपील स / ITA No.1025/PUN/2017

निर्धारण वर्ष / Assessment Year : 2010-11

Beed Taluka Dhud Vavsayik Sahakari Sangh Limited,
Manjari Phata, at Post Pali,
Dist – Beed.

..... अपीलार्थी /
Appellant.

PAN : AAATB8131F.

बनाम v/s

The Income Tax Officer,
Ward – 1, Beed.

..... प्रत्यर्थी /
Respondent

Assessee by : None.

Revenue by : Shri Prashant Gudekar.

सुनवाई की तारीख / Date of Hearing : 17.07.2019		घोषणा की तारीख / Date of Pronouncement: 01.08.2019

आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A)-2, Aurangabad dated 15.03.2017 for the assessment year 2010-11.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a Co-operative Society stated to be engaged in the business of collection of Milk from the members of the assessee Society and selling the same to Maharashtra State Co-operative Milk Federation, Mumbai. Assessee filed its return of income for A.Y. 2010-11 on

15.10.2010 declaring total income of Rs.50,74,224/- after claiming deduction u/s 80P of the Act. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dt.06.11.2012 wherein the AO allowed the deduction u/s 80P of the Act claimed by the assessee and accepted the return of income. Thereafter, AO passed order u/s 154 of the Act vide order dt.30.09.2014 wherein he held that assessee was not entitled for deduction u/s 80P(2)(b) of the Act and was only entitled to deduction of Rs.50,000/- u/s 80P(2)(c) of the Act and thus according to him there was excess deduction of Rs.50,74,224/-. He accordingly passed order u/s 154 of the Act wherein he disallowed the claim of deduction of Rs.50,74,224/- u/s 80P(2)(b) of the Act. Aggrieved by the order of AO passed u/s 154 of the Act, assessee carried the matter before Ld.CIT(A), who vide order dt.15.03.2017 (in appeal No.ABD/CIT(A)-2/76/2016-17) dismissed the appeal of the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the following grounds :

"1. On the facts and in the circumstances of the case and in law, the CIT(A) erred the confirming the rectification order passed under section 154 by the A.O, for the reasons that:-

(a) Even though there is no apparent mistake from the face of record, which could be rectified u/s.154 of the IT Act, from the said assessment order;

(b) Even though issue involved being debatable cannot be corrected under section 154 of the IT Act, as it cannot be considered as mistake within the meaning of section 154 of the I T Act;

(c) Even though there is no mistake within the meaning of section 154 of the IT Act, as the said original assessment order assessment order was passed u/s.143(3) dt.6-11-2012, after due verification of earlier records, wherein such deduction was allowed;

(d) Even if income of the appellant is considered not eligible for deduction u/s. 80 P(2)(b) of the IT Act, then also it is not liable to tax as income is derives on mutuality concept with the members, as per rules and regulation and by-laws of the appellant".

3. The case file reveals that on last occasion, none attended on behalf of the assessee though notice was served on assessee. On the date of present hearing also none appeared on behalf of the assessee nor was any adjournment application filed. Considering the fact that the issue in the present case is covered by various judicial pronouncements, we proceed to decide the appeal ex-parte qua the assessee on the basis of material available on record and after hearing the Ld. D.R.

4. The perusal of the grounds reveal that sole grievance of the assessee is its challenge about the rectification order passed by the AO u/s 154 of the Act wherein the claim of assessee of deduction u/s 80P of the Act has been withdrawn which was originally allowed in the assessment proceedings u/s 143(3) of the Act.

5. Before us, Ld. D.R. took us through the order of AO passed u/s 154 of the Act and submitted that assessee was not eligible for deduction u/s 80P of the Act and was wrongly allowed by AO in the order framed u/s 143(3) of the Act. AO thereafter passed rectification order u/s 154 of the Act wherein he withdrew the claim of deduction u/s 80P of the Act. He submitted that there is no error in the order of AO and he thus supported the order of AO.

6. We have heard the Ld. D.R. and perused the material available on record. The issue in the present ground is with respect to the disallowance of Rs.50,74,224/- on account of deduction u/s 80P(2)(b) of the Act made by the AO in the order passed u/s 154 of the Act. In the present case, it is an undisputed fact as revealed from the statements of facts that assessee Society had filed the return of income wherein it had claimed deduction of

Rs.50,74,224/- u/s 80P of the Act. We find that while framing the assessment u/s 143(3) of the Act, AO vide order dt.06.11.2012 had allowed the claim of deduction u/s 80P of the Act. Thereafter vide order dt.30.09.2015 passed u/s 154 of the Act AO held that assessee is not eligible for claim of deduction u/s 80P(2)(b) of the Act and accordingly withdrew the claim of deduction.

7. Section 154 of the Act provides for rectification of any mistake which are apparent from record in the orders specified therein. A mistake which can be rectified u/s 154 of the Act is one which is patient and obvious and whose discovering is not dependent on argument or elaboration. On the issue of the mistakes that can be rectified u/s 154 of the Act, we find that the Hon'ble Delhi High Court in the case of CIT Vs. M.M.T.C. Ltd., reported in [2000] 246 ITR 725 (Del) has observed as under :

> *"A bare look at section 154 of the Act 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 the 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 justified in holding that there was no mistake apparent on the face of the record. In order to bring an 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. As observed by the apex court in Master Construction Co. (P.) Ltd. v. State of Orissa [1966] 17 STC 360, an error which is apparent from the record should be one which is not an error which depends for its discovery on elaborate arguments on questions of fact or law. A similar view was also expressed in Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa*

Tirumale [1960] AIR 1960 SC 137. It is to be noted that the language used in Order 47, rule 1 of the Code of Civil Procedure, 1908 (in short "the CPC"), is different from the language used in section 154 of the Act. The power is given to various authorities to rectify any mistake "apparent from record" under section 154 of the Act. In the Civil Procedure Code, the words are "an error apparent on the face of the record". The two provisions do not mean the same thing. The power of the Tribunal in section 154 to rectify "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" (see T. S. Balaram, ITO v. Volkart Brothers [1971] 82 ITR 50 (SC)). "Mistake" is an ordinary word but in taxation laws, it has a special significance. It is not an arithmetical error which, after a judicious probe into the record from which it is supposed to emanate or discerned. The word "mistake" is inherently indefinite in scope, as what may be a mistake for one may not be one for another. It is mostly subjective and the dividing line in border areas is thin and indiscernible. It is something which a duly and judiciously instructed mind can find out from the record. In order to attract the power to rectify under section 154, it is not sufficient if there is merely a mistake in the orders sought to be rectified. The mistake to be rectified must be one apparent from the record. A decision on a debatable point of law or a disputed question of fact is not a mistake apparent from the record. The plain meaning of the word "apparent" is that it must be something which appears to be so ex facie and is incapable of argument or debate. It, therefore, follows that a decision on a debatable point of law or fact or failure to apply the law to a set of facts which remains to be investigated cannot be corrected by way of rectification. On the facts of the present case, we find that there was no mistake apparent from the record which could be rectified under section 154 of the Act. The questions proposed deal with conclusions on the facts giving rise to no question of law."

8. In the present case, with the passing of rectification order u/s 154 of the Act, original order passed u/s 143(3) of the Act will be substituted by the new order with denial of claim of deduction u/s 80P(2)(b) of the Act. This in our view is not permissible more so in view of the aforesaid decision of Hon'ble Delhi High Court in the case of CIT Vs. M.M.T.C. Ltd., (supra) wherein the Hon'ble High Court has observed that power to rectify the mistake however, does not cover cases where a revision or review of the order is intended.

9. Further, we find that Hon'ble Supreme Court in the case of T.S. Balram, ITO Vs. M/s. Volkart Brothers reported in (1971) 82 ITR 50 has held that "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". We further find that before Ld.CIT(A), it was assessee's

contention that the deduction u/s 80P has been allowed to the assessee in earlier years.

10. Considering the fact that assessee had been allowed deduction u/s 80P of the Act in earlier assessment years, therefore, also it cannot be said that the issue of deduction was a debatable issue which could be rectified u/s 154 of the Act. We therefore considering the decisions cited hereinabove are of the view that in the present case AO could not have proceeded to withdrew the deduction u/s 80P in the order u/s 154 of the Act. We therefore set aside the order of AO passed u/s 154 of the Act **and thus, the grounds of assessee are allowed.**

11. **In the result, the appeal of assessee is allowed.**

Order pronounced on 1st day of August, 2019.

Sd/-	**Sd/-**
(**SUSHMA CHOWLA**)	(**ANIL CHATURVEDI**)
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 1st August, 2019.
Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A) – 2, Aurangabad.
4. Pr. CIT-2, Aurangabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR, ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.