

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A": NEW DELHI

BEFORE SHRIR.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI N. K. CHOUDHRY, JUDICIAL MEMBER

ITA No.7508/Del/2018  
(Assessment Year: 2013-14)

M/s. Allied Agencies,  
9, Okhla Industrial Estate,  
New Delhi  
PAN: AABFA3256G  
(Appellant)

Vs. ITO,  
Ward-29(5),  
New Delhi  
(Respondent)

Assessee by : ShriGautam Jain, Adv  
ShriLalitMoha, CA  
Revenue by: Shri M. K. Pandey, Ld. Sr. DR  
Date of Hearing 12/04/2022  
Date of pronouncement 29/04/2022

O R D E R

PER N.K. CHOUDHRY, J. M.:

1. The Assessee has preferred the instant appeal against the order dated 28.09.2018, impugned herein, passed by the Ld. Commissioner of Income-tax (Appeals)-10, New Delhi (in short 'Ld. Commissioner) u/s 250(6) of the Income-tax Act, 1961 (in short "the Act"), for the assessment year 2013-14, whereby the order passed by the AO u/s 154 of the Act was upheld.
2. In this case the return of income was filed by the Assessee on dated 23.09.2013 by declaring the income of Rs. 3,89,390/-, which was processed and completed on dated 05.06.2015 by assessing at an income of Rs. 4,13,770/- u/s 143(3) of the Act as against the returned income of Rs. 3,89,390/-.

2.1 Later on, on perusal of the details filed during the course of assessment proceeding, it was revealed by the AO that a partnership deed dated 04.04.1993 was filed along with other details on dated 01.05.2015 from where it appears that the partnership deed had not authorized any payment of interest to any partner. However, the Assessee had claimed deduction of Rs. 13,47,480/- being interest paid to the partners in its computation of income/ P&L account. Thus, it was observed by the AO that as per the provisions of section 40(b)(ii) any payment of remuneration to any partner who is a working partner or of interest to any partner which, in either case, is not authorized by, or is in accordance with, the terms of partnership deed is not deductible in computing the income chargeable under the heads "Profits or Gains of business or profession".

2.2 Though the AO issued a notice on dated 08.02.2017 fixing the case for hearing on 15.02.2017 to rectify the excess interest expenses allowed. However, the Assessee neither appeared nor filed any reply. Subsequently, on dated 27.02.2017 the Assessee in the proceedings u/s 154 of the Act except filing an adjournment application, did not file any reply and/or documents therefore, it was observed by the AO that the Assessee has nothing to say or submit or furnish which can justify the excess claim. Consequently, the AO disallowed the extra claim of interest to the tune of Rs. 13,47,480/- and added the same in the income of the Assessee while rectifying the assessment order u./s 154 of the Act.

3. The Assessee challenged the said action of the Ld. Commissioner on various counts. The Assessee in the appellate

proceeding filed an application under Rule 46 of the IT Rules 1962 ( in short "the Rules) along with supplementary partnership deed dated 11.09.2012by incorporating certain clauses with a view to comply with the provisions of the Act in respect of payment of interest and salary to partners and raised the issue that though the Assessee vide letter dated 06.03.2017 furnished with ASK on 10.03.2017 submitted a copy of the supplementary partnership deed for perusal of the AO, however, the AO without taking cognizance of the same passed an order on dated 08.03.2017 without giving proper opportunity to the Assessee.

3.1 The Ld. Commissioner could not find any reason to admit the additional evidence under Rule 46A of the IT Rules (in short the Rule) and without prejudice to the above decision u/s 46A of the Rules, decided the case on merits also and confirmed the disallowance of Rs. 13,47,800/- by holding that hearing u/s 154 of the Act was fixed by the Id. AO on dated 06.03.2017. However, on the said date no submission was furnished and therefore, the AO passed the rectification order on dated 08.03.2017. The Assessee has furnished a copy of a letter dated 06.03.2017 furnished with ASK on 10.03.2017. As the order was already passed on 08.03.2017 and therefore there was no occasion for the AO to consider the submission of the appellant furnished on 10.03.2017. Since, the appellant has not given any cogent reason for admission of additional evidence during the course of appellate proceedings under Rule 46A at this stage. Hence, the additional evidence submitted by the appellant during the course of appellate proceedings cannot be admitted.

4. Aggrieved by the impugned order, the Assessee is in appeal before us. Though the Assessee also raised the issues on merits however, emphasized that disallowance made by AO and sustained by Ld. Commissioner is a debatable issue and not an apparent mistake warranting against u/s 154 of the Act, therefore, the same is liable to be deleted, being legally unsustainable.

5. On the contrary, the revenue department though relied upon the orders of the authorities below, however could not controvert the factual position with regard to debatable issue.

6. We have given thoughtful consideration to the issue involved in the instant case. The Hon'ble Apex Court in the case of TS Balaram Vs. Volkart Brothers 82 ITR 50 (SC) clearly held that a mistake apparent on the record must be an obvious and patent mistake and not something which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions cannot be said to be an error apparent on the face of the record. A decision on a debatable point of law is not a mistake apparent from the record.

6.1 Coming to the instant case it is not in dispute that the AO has passed the order u/s 154 of the Act on a debatable issue, which cannot be construed as rectification of any mistake apparent from the record and by virtue of provisions of section 154 of the Act, the AO is not empowered to do so, hence respectfully following the aforesaid dictum of the Hon'ble Apex Court, we are inclined to quash the order passed by the Id. AO u/s 154 of the Act itself. Ordered accordingly. Consequently, the impugned order is set aside.

7. In the result the appeal filed by the Assessee is allowed.

Order pronounced in the open court on 29/04/2022.

-Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMBER

-Sd/-  
(N.K. CHOUDHRY)  
JUDICIAL MEMBER

Dated: 29/04/2022  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi