IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 7170/DEL/2019 (A.Y 2014-15)

Gopuri Charitable Trust C/o Bajaj Auto Ltd. B-60-61, Naraina Industrial Area, Phase-II, New Delhi **PAN No. AAATG0251B** (**APPELLANT)**	Vs.	DCIT CPC Post Bag No. 2, Electronic City Post Office, Bangalore, Karnataka **(RESPONDENT)**

Assessee by :	**Ms. Vasanti Patel, Adv & Sh. Mahendra Gohel, CA**
Department by:	**Shri Rajendra Jha, Sr. D. R.;**

Date of Hearing	**10.11.2022**
Date of Pronouncement	**16.11.2022**

ORDER

PER YOGESH KUMAR U.S, JM

This appeal is filed by the assessee for assessment year 2014-15 against the order of the Ld. Commissioner of Income Tax (Appeals)-40, Delhi [hereinafter referred to CIT (Appeals) dated 04/07/2019.

2. The assessee has raised the following substantive grounds of appeal:-

"DENIAL OF DEDUCTION UNDER CHAPTER VI-A/SECTION 80-G/ 80GGA READ WITH SECTION 35 AC ***OF THE ACT RS. 45,58,990/- :***

1.1 On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) [CIT(A)] erred in confirming the denial of Deduction claimed by the Appellant for a sum of Rs. 4^5,58,990/- *under Chapter VI-A / Section 80GGA read with Section 35AC of the Act in respect of donation paid to eligible trusts.*

1.2. *The learned CIT (A) erred in dismissing the appeal without dealing with the submissions made by the appellant. The Appellant submits that the order passed by the CIT (A) is based on non-application of mind and therefore should be struck down.*

1.3. *The CIT (A) failed to appreciate that there is no mistake / error in the Return of Income filed by the appellant and the adjustment made under Section 143(1) of the Act itself is illegal, invalid and bad in law.*

1.4. *The learned Assessing Officer and the CIT (A) failed to appreciate that all along in earlier years deduction has been claimed by the appellant trust under Chapter VI-A / Section 80-G/80-GGA read with Section 35A of the Act and such deduction has been allowed consistently and there is no change in facts of the case and on that basis the CIT (A) ought to have considered the same and allowed the said deduction under Section 80-G / 80-GGA of the Act read with 35AC of the Act.*

1.5. *The learned CIT (A) failed to appreciate that the failure to apply statutory provisions of the Income tax Act, 1961 and assessment of income framed in violation of such provisions is a mistake apparent from the records. It is submitted that the Appellate Order amounts to failure to correct / rectify such mistake and hence the same is unsustainable in law.*

In view of the above, the appellant prays that the learned Assessing Officer be directed to grant deduction under Chapter VI-A/ Section 80-G / Section 80-GGA of the Act and reduce the total income of the appellant accordingly.

I, NIRA] BA]AJ, *the Trustee of GOPURI* CHARITABLE *TRUST, the* Appellant, *do hereby declare that what is stated above is to the best of my knowledge and information."*

3. Brief facts of the case are that, the Central Processing Centre (CPC), Bangalore, issued intimation u/s 143(1) of the Act wherein the deduction of Rs. 52,00,000/- claimed by the assessee under Chapter VI A of the Act in respect of donation paid to eligible trust has been rejected. The assessee has filed an application for rectification before the CPC. The application filed by the assessee for rectification has been rejected and sustained adjustment made by the CPC.

4. Aggrieved by the rejection of the rectification application, the assessee has preferred an appeal before the CIT (A). The Ld.CIT (A) vide order dated 04/07/2019 rejected the appeal filed by the assessee.

5. Aggrieved by the order dated 04/07/2019 passed by the Ld.CIT (A), the assessee has preferred the present appeal on the grounds mentioned above.

6. The Ld. Counsel for the assessee submitted that the assessee has not claimed any exemption u/s 11 of the Act. The assessee has been assessed as Association of Persons (AOP), therefore, the deduction denied by the Lower Authorities on the basis that the entity claimed exemption u/s 11 of the Act, such income is not includable in the total income is contrary to the records. Therefore, the appeal deserves to be allowed.

7. The Ld. Counsel for the assessee further submitted that, the identical issue has already been decided in favour of the assessee in the case of Parijat Trust Vs. DCIT by the Co-ordinate Bench of the Tribunal in 5088/Del/2019 wherein the Co-ordinate Bench has followed the orders of the Mumbai Bench in the case of Sun Flower Trust Vs. ITO (e) in ITA No. 5093/Del/2019 of Assessment Year 2015-16. Further relied on the order of the Mumbai Tribunal in Bhoopati Shikshan Pratisthan, in ITA No. 4606/Mum/2019 for Assessment Year 2014-15.

8. Per contra, the Ld. DR has opposed the submissions of the Ld. AR and supported the orders of the Lower Authorities.

9. We have heard the parties, perused the material on record and gave our thoughtful consideration. The Ld.CIT (A) while deciding the issue against the assessee has observed as under:-

> *"4.5. From the provisions as reproduced above it is apparent that income or loss is computed under section 143(l)(a) after making the adjustments as per sub-clauses (i) and (ii) and the adjustments have are based entirely on the information given in the return of income. Based on die facts of the case and in view of the information as given in the return, deduction under Chapter VI-A was not allowed in case of an entity which is claiming exemption under section 11 and in whose case no portion of the income is not exempt in view of*

the provisions of section 13. This is so since deduction under Chapter VI-A is to be allowed while computing the total income of an assessee and in the case of entities claiming exemption under section 11, the income is not included in total income.

4.6 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. In die 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, an the face of the record to be corrected. Where an error is far from self-evident, it ceases to be an apparent 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."

4.7 from the return of income, as noted above it is apparent that exemption was claimed under section 11 and no income was shown in the return of income in respect of which exemption was not available by virtue of section 13. In view of such facts there is prima facie no case of the assessee for income being assessed as AOP when exemption has been claimed and no portion has been shown to be not exempt by virtue of section 13."

10. The identical issue has been decided in the case of Sun Flower Trust Vs. ITO (e) (supra), wherein the similar order was passed by the Ld.CIT(A) by reproducing the very same above paragraphs . The Co-ordinate Bench of the Tribunal has held as under:-

"12. "The identical issue involved in the present Appeal has been deal and decided against the Revenue by the Mumbai Bench of the Tribunal in the case of Bhoopati Shikshan Pratisthan, in 1TA No.

4606/MUM/2019 vide order dated 07/02/2022, wherein it is held that, the assessee being a charitable trust registered u/s 12A of the Income Tax Act is entitled to claim deduction u/s 80G/80GGA of the Act. The relevant portion of the same is as under:-

"7. We find that in the preceding AY i.e. AY 2013-14 and in the succeeding AY i.e. AY 2015-16 the assessee's claim of deduction under section 80G/80GGA has been accepted by the Department. Ostensibly, the assessee has been making similar donations in the preceding and the succeeding AYs towards Chief Minister's Relief Fund, and donation to some other eligible institutions and the consequent benefit of deduction under section 80G has been allowed to the assessee. In AY 2013-14 in scrutiny assessment proceedings, the assessee's claim was allowed and in Assessment Year 2015-16, the assessee 's claim of deduction u/s 80GGA was accepted by the CPC as is evident from the intimation u/s 143(1) of the Act dated 02/08/2016. Thus, disallowance of assessee's claim of deduction under Chapter-VIA in the impugned AY was purely a computational error which could have been rectified under section 154 of the Act. The assessee had furnished relevant documents evidencing the donations made eligible for deduction under section 80G6A/80G of the Act. The same were not disputed by the Department, it is not a case where the assessee's donations were suspected or the institutions/funds to whom donations were made were under lense of suspicion, therefore, the observations made by CIT(A) for dismissing assessee's appeal are unsustainable. Consequently, the impugned order is set-aside and the appeal of assessee is allowed. The AO is directed to grant benefit of deduction claimed by the assessee under Chapter-VIA of the Act."

11. It is found that the Co-ordinate Bench of the Tribunal in the case of Parijat Trust vs. DCIT in ITA No. 5088/Del/2019 has also followed the above order made in Sun Flower Trust Vs. ITO (E) (supra). Therefore, by respectfully following the above orders, we hold that the assessee is entitled for deduction of RS. 45,58,990/- claimed under Chapter VI-A/Section 80GGA read with Section 35AC of the Act and further we direct the A.O. to grant the benefit of deduction claimed by the assessee under Chapter VI-A of the Act in accordance with law.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on : **16th NOVEMBER 2022.**

Sd/-	**Sd/-**
(SHAMIM YAHYA)	**(YOGESH KUMAR U.S.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 16/11/2022

R.N

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI