

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
&  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

I.T.A No.961/DEL/2020  
Assessment Year 2012-13

Iftakhar Danish, B-133, Near M.Z. School, Moh. Hazrat Nagar, Noorpur, Bijnor.	v.	ITO, Ward-3(3), Bijnor.
TAN/PAN: AJJPD0512A		
(Appellant)		(Respondent)

Assessee by:	Shri Vivek Agarwal, CA		
Department by:	Shri Vijay Kumar Kataria, Sr.DR		
Date of hearing:	05	01	2023
Date of pronouncement:	29	03	2023

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals), Moradabad, ['CIT(A)' in short], dated 22.10.2019 arising from the assessment order dated 26.05.2016 passed by the Assessing Officer (AO) under Section 154 of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. As per the grounds of appeal, the assessee has challenged the rectification carried out by the Assessing Officer under Section 154 of the Act towards disallowance under Section 40A(3) of the Act amounting to Rs.65,42,800/- which was in turn endorsed by the CIT(A) in the first appeal and decided against the

assessee.

3. Aggrieved, the assessee preferred appeal before ITAT.

4. Briefly stated, the assessee is engaged in civil construction etc. The assessee filed return of income at Rs.6,70,010/- derived from civil construction receipts of Rs.2,69,66,703/-. The Assessing Officer completed the regular assessment under Section 143(3) of the Act vide order dated 19.01.2015 on a total income of Rs.8,74,510/-. Thereafter, an order dated 26.05.2016 was passed under Section 154 of the Act wherein a disallowance of Rs.65,42,800/- was made on account of cash payments made towards purchase of bricks alleging breach of Section 40A(3) of the Act. In defense, the assessee contended that the cash payments were made on Holiday / Sunday and is thus covered by extant clause (J) of Rule 8DD of the Income Tax Rules as well as by considerations of business expediency.

4. It is further contended that the issue of cash payment in contravention of provisions of Section 40A(3) of the Act was under examination of the Assessing Officer and reason for cash payment were explained vide paragraph 3 of reply dated 19.01.2015 submitted during the assessment proceedings. The Assessing Officer had also examined the books, bills and vouchers produced before him. All the aspects of the case were examined by the Assessing Officer. It is because of such explanations furnished in the course of assessment proceedings that when the issue was verified by the audit team, an audit objection was raised and based on the opinion of the audit team, the Assessing Officer invoked the provisions of Section 154 of the Act.

5. The assessee further contends that provisions of Section 154 confer a very narrow and limited power to rectify any mistake which is apparent from record. It is not open to the Assessing Officer to go into the true purport of the provision of the Act in the rectification proceedings and what can be rectified is an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points where there may be conceivably two opinions.

6. We agree. The Rule 6DD(J) at the relevant time provided for inapplicability of Section 40A(3) where the payments were made in cash on bank Holidays. The Assessing Officer has questioned the intention of cash payments shown on Sunday of every month and thus rejected the explanation. While, the explanation of payments on Holidays appears highly doubtful but however such inference cannot be taken in the realm of obvious mistake. Section 154 has no application to gauge the purported *mala fides* in explanation offered by the Assessee behind such transaction. The narrow jurisdiction of Section 154 is thus not available to the Assessing Officer to rectify such so called mistake.

7. We thus set aside the order of the CIT(A) and cancel the rectification carried out on this point.

8. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open Court on 29/03/2023.**

Sd/-

**[ANUBHAV SHARMA]  
JUDICIAL MEMBER**

DATED: /03/2023

Sd/-

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**