आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL, RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

Sl. No.	ITA No.	Name of the Appellant	Name of the Respondent	Asst. Years	Quarter	Form
1-8	184/RPR/2022 185/RPR/2022 186/RPR/2022 187/RPR/2022 188/RPR/2022 189/RPR/2022 190/RPR/2022 191/RPR/2022	8th Batalian India Reserve CAF Near Patel Bhairvi Mandir, G E Road, Rajnandgaon (C.G.) Pin-491 441 PAN : AAAGC2191K	The ACIT(CPC-TDS), Ghaziabad	2013-14 2013-14 2013-14 2013-14 2014-15 2014-15 2014-15 2014-15	Qr.1 Qr.2 Qr.3 Qr.4 Qr.1 Qr.2 Qr.3 Qr.4	24Q 24Q 24Q 24Q 24Q 24Q 24Q 24Q

Assessee by : S/shri Hardik Chordia & Pratik Sadrani, CAs
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 11.08.2023
घोषणा की तारीख / Date of Pronouncement : 14.08.2023

आदेश / ORDER

PER RAVISH SOOD, JM:

The captioned appeals filed by the assessee are directed against the order passed by the CIT(Appeals), National Faceless Assessment Centre (NFAC), Delhi dated 07.09.2022, which in turn arises from the order passed by the Deputy Commissioner of Income Tax (for short 'DCIT), Centralized Processing Cell (CPC), TDS, Ghaziabad u/s.154 of the Income Tax Act, 1961 (for short 'Act') dated 06.09.2014. As common issues are involved in the captioned appeals, therefore, the same are being taken up and disposed off by way of a consolidated order.

2. Succinctly stated, the DCIT, TDS-CPC, Ghaziabad had passed an intimation u/s.200A of the Act dated 06.09.2014 wherein late fees u/s.234E of the Act was imposed for all four quarters for both the aforementioned years i.e. A.Y.2013-14 and A.Y.2014-15, as under:

Sr. No.	ITA No.	Financial year	Qtr.	Form Type	Amount of late filing levy u/s.234E	Date of original TDS return filed	Due date of filing Returns	DIN & Order No.
1.	184/RPR/2022	2013-14	Q1	24Q	31000	2nd Sep-14	15-Jul-13	ITBA/NFAC/S/250/2022-23/1045268707 (1)
2.	185/RPR/2022	2013-14	Q2	24Q	31000	2nd Sep-14	15-Oct-13	ITBA/NFAC/S/250/2022-23/1045268507(1)
3.	186/RPR/2022	2013-14	Q3	24Q	31000	2nd Sep-14	15-Jan-14	ITBA/NFAC/S/250/2022-23/1045268848(1)
4.	187/RPR/2022	2013-14	Q4	24Q	22000	2nd Sep-14	15-May-14	ITBA/NFAC/S/250/2022-23/1045268179(1)
5.	188/RPR/2022	2014-15	Q1	24Q	58200	18-May-15	15-Jul-14	ITBA/NFAC/S/250/2022-23/1045269367(1)
6.	189/RPR/2022	2014-15	Q2	24Q	39800	18-May-15	15-Oct-14	ITBA/NFAC/S/250/2022-23/1045269774(1)

7.	190/RPR/2022	2014-15	Q3	24Q	21400	18-May-15	15-Jan-15	ITBA/NFAC/S/250/2022-23/1045270029(1)
8.	191/RPR/2022	2014-15	Q4	24Q	5400	11-Jun-15	15-May-15	ITBA/NFAC/S/250/2022-23/1045270361(1)

3. On perusal of the records, it transpires that the assessee instead of filing appeals against the original orders u/s.200A of the Act, filed "correction statements" with the DCIT, CPC-TDS, Ghaziabad on 02.02.2022. The DCIT, CPC-TDS, Ghaziabad not finding any "mistake apparent from record" passed rectification orders u/s.154 of the Act dated 02.02.2022 without carrying out any changes in the original orders passed u/s.200A of the Act dated 06.09.2014.

4. The assessee being aggrieved with the order passed by the DCIT, TDS-CPC, Ghaziabad u/s.154 of the Act dated 02.02.2022 carried the matters in appeal before the CIT(Appeals), NFAC. The CIT(Appeals), NFAC Delhi vide his orders dated 07.09.2022 dismissed the appeals of the assessee for two-fold reasons, viz. (i) that as per the provisions of Section 154 of the Act, rectification of a mistake in an order could be made upto four years from the end of the financial year in which the order sought to be rectified was passed, therefore, as the rectification applications were filed by the assessee after expiry of period of more than seven years from the end of the financial year in which the orders sought to be rectified were passed, the same, thus, being barred by limitation were not maintainable; and (ii) as the issue as regards which rectification was sought by the

assessee appellant required fresh investigation of facts, the same, thus, not being a "mistake apparent from record" fell beyond the scope and ken of Section 154 of the Act. Accordingly, the CIT(Appeals) on the basis of his aforesaid observations dismissed the appeals filed by the assessee. For the sake of clarity, the relevant observations of the CIT(Appeals) are culled out as under:

> "I have carefully considered the submission uploaded, facts and circumstances of the case, statement of facts and grounds of appeal filed by the appellant. I have also carefully gone through the rectification order u/s. 154 dated 02.02.2022. The relevant case laws have been perused and considered.
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> 5.1 Ground No. 1 to 5 :-
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> 5.1.1 Grounds of appeal are not related to mistake apparent from record i.e. out of order u/s. 154 of the Act, but all are related to late fee u/s. 234E of Rs. 31,000/- for delay in filing quarterly E-TDS return. From form number 35, it is clear that appeal has been filed against order u/s. 154 of the Act, and not against the original order u/s. 200A.
>
> 5.1.2 have gone through the rectification order passed by the CPC u/s.154 r.w.s. 200A of the Act, wherein the sum of Rs. 31,000/- has been determined and the grounds of appeal and the appellant's submission. On perusal of the rectification order, it is seen that the Appellant had filed the rectification letter on 02.02.2022 against the original order passed u/s.200A on 06.09.2014. As per the provision of Section 154 of the Act, rectification can be made upto 4 years from the end of the financial year in which order sought to be rectified was passed. However, in this case the appellant has filed rectification application after the expiry of more than seven years from the end of the financial year in which order sought to be rectified was passed. Thus, the rectification application of the appellant is time barred.
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> 5.1.3 Further, it is seen from the rectification order, wherein the-DCIT-CPC-(TDS) has not found any mistake apparent from the record and hence the rectification order was passed without any changes in the opinion made in the original order passed on 06.09.2014.

5.1.4 The appellant has filed the appeal against order u/s 200A of. the CPC(TDS) Ghaziabad against the levy of late filing fee u/s 234E for late filing of quarterly TDS statement 240 for A.Y. 2013-14 (F.Y. 2012-13 01), which was filed and for which order was passed on 06.09.2014.

5.1.5 However, it is noted that the appellant has enclosed an order u/s.154 dated 02.02.2022 (and not order u/s 200A) along with the Form 35 and given this as the date of order appealed against in Form 35. This order u/s 154 has been passed on a "Correction statement" to the TDS statement, filed by the appellant on 02.02.2022. The grounds of appeal filed by the appellant do not emanate from enclosed with the Form 35, which make the entire appeal as defective.

5.1.6 Now the extract of Section 154 of the Act is reproduced below for appreciating the issue:-

> "(1) With a view to rectify any mistake apparent from record an Income Tax Authority referred under section 116 may
>
> 1. Amend any order passed by it
> 2. Amend intimation or demand initiation under section 143(1)
> 3. Amend intimation under section 200A(1)
>
> .....
>
> 154(7) save as otherwise..... no amendment under the section shall be made after expiry of four years .....

The Income Tax Authorities referred under section 116 may amend any ORDER passed by it or order u/s. 200A, if found any mistake apparent from the record. Further, the literal interpretation of the mistake apparent from the record means "A mistake apparent from the record must be an obvious and patent mistake and not something which is established by a long-drawn process of reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent on record". Thus, the order passed by CPC, Ghaziabad is rectifiable but then the mistake should be apparent from the record. There are a catena of case laws on this aspect, wherein it has been emphasized that mistake must be obvious and patent. Some of them are quoted below:

1. The power to make an adjustment by disallowing a deduction or relief claimed in the return can be invoked only when the claim is prima facie inadmissible Bank of America v DCIT 200 ITR 739). Prima facie in this sub-section means clear or self-evident, meaning thereby that the claim must constitute an error on the part of the assessee which is apparent on the face of the record.

2. The deduction claimed must be inadmissible on the face of the return and the documents accompanying it (Khatau Junker v Pathania 196 ITR 55, CIT v Sitaram Textiles 248 ITR 139). A debatable issue cannot be decided by the assessing officer under the guise of making an adjustment under section 143(1)(a) (Coates v DCIT 214 ITR 498, CIT v Shikhar Chand Jain 263 ITR 221, CIT v Manubhai M Patel 296 ITR 143).

3. Further, what falls within the scope of rectification as visualized under the provisions of section 154, is the case of a mistake, and such mistake should be apparent from record. Judicial pronouncements on the subject have laid down the line of reasoning that the mistake should be obvious, clear, and patent and should not involve two opinions (CIT v PK Bhardwaj 279 ITR 326, CIT v Gujarat State Export Corporation Ltd 279 ITR 477). 4. The scope of making adjustments under section 143(1), is somewhat similar to the power to rectify a mistake apparent from the record under section 154 (Khatau Junker v Pathania [1992] 196 1TR 55, Bom), The Hon'ble Bombay High Court has held as under:-

> "17. In fact, the wording of this provisions itself makes this very clear. Under clause (ii) of the proviso to section 143(1)(a), any loss carried forward, deduction, allowance or relief has to be allowed on the basis of the information available in such return or accounts or documents accompanying it. Similarly, under clause (iii) of the proviso, to disallow any deduction, allowance or relief claimed, such deduction, allowance or relief must be such as is, on the basis of the information available in the return, accounts or documents, prima facie inadmissible. The Income-tax Officer therefore, has no power to go beyond or behind the return, accounts or documents, either in allowing or in disallowing any such deduction, allowance or relief.
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> 18. Under clause (iii) to the proviso, unless the return or the accompanying documents or accounts shows that the deduction claimed is prima facie inadmissible, such deduction cannot be disallowed at the intimation stage. If the Income-tax Officer is not satisfied with the claim for deduction, or if he requires any further information or any

> further evidence in that connection, he is bound to follow the procedure prescribed under section 143(2) of giving a notice to the assessee. It is not open to him to disallow such a claim under section 143(1)(a).
>
> 22. We are not here concerned with a case where, under any specific section of the Income-tax Act, a certain deduction or allowance cannot be granted unless certain specified documents are annexed to the return. In such a case, it may be possible to say that, in the absence of such a document, the deduction cannot be granted because the section of the Income-tax Act itself says so. We, however, have not examined this aspect of the matter as it does not arise in the cases which are before us. But, in any event, in the absence of any specific provision in the Income-tax Act which disallows a deduction because a specific document specified in that section is not annexed to the return, the Income tax Officer cannot, under clause (iii) of the proviso to section 143(1)(a), disallow a claim or a deduction because, in his view, adequate evidence in support of such a claim or deduction is not before him. He can disallow a claim for deduction only if he is satisfied, on the basis of the material which is before him, that the assessee is not entitled to such a deduction.
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> 23. The use of the phrases "prima facie admissible" in clause (ii) to the proviso and "prima facie inadmissible' in clause (iii) to the proviso also lend support to this interpretation. In its literal sense, "prima facie" means on the face of it. Hence, on the face of the return and the documents and accounts accompanying it, the deduction claimed must be inadmissible. Only then, can it be disallowed under the proviso to section 143(1)(a). If any further enquiry is necessary, or if the Income-tax Officer feels that further proof is required in connection with the claim for deduction, he will have to issue a notice under sub-section (2) of section 143."

5.1.7 The order was passed u/s. 200A on 06.09.2014, which was appealable. However, the appellant has not filed any appeal against the order within the specified time period. Rather, the appellant has filed rectification application u/s. 154 dated 02.02.2022 after more than seven years of order dated 143(1) which was brought to be rectified. In response, the rectification order was passed on 02.02.2022, wherein no changes have been made by the Centralized Processing Cell, TDS Ghaziabad and passed same as original order, as no mistakes apparent from record were found. The appellant agitated against the rectification order and filed the instant appeal.

On perusal of the grounds of appeal, no ground has been raised in respect to rectification of mistake which is alleged to be apparent from record. Therefore, it is clear cut case, where the appellant has failed to file the appeal in response to the intimation order passed u/s.200A of the Act. Hence, the appellant has filed the rectification application and against the rectification order appeal has been filed. However, in the grounds of appeals, the appellant has nowhere stated that there is mistake apparent from record. In such a scenario, TDS-CPC has correctly passed the order u/s. 154 without distinct with original order.

5.1.8 If the appellant was aggrieved by late fee u/s. 234E of Rs. 31,000/- for delay in filing quarterly E-TDS return, it should have challenged the said order by filing appeal against the same. Apparently, the appellant has chosen not to do so. It has later on, filed a rectification petition u/s 154 and claimed that the said late fee u/s.234F was a mistake apparent from the record. In rectification, the most important aspect which needs to be looked into is, whether the claim of the appellant is within the scope of section 154 or not. Scope of rectification is limited to correcting error of fact or error of law, on the basis of material available on record. In the appeal under consideration the appellant has sought rectification on issues which will fresh investigation of facts. The appellant has tried to use appeal against rejection of rectification application as a method to challenge the order u/s. 200A, as it has not filed any appeal against the same.

5.1.9 The late fee u/s. 234E of Rs. for delay in filing quarterly E-TDS return could have been looked into once the appeal would have been filed against the order u/s. 200A of the Act. But, for rectification purpose, issues cannot be examined which are not apparent from the record. The appeal against order u/s. 154 has been filed to agitate the grievances against the order u/s. 200A of the Act. It is explicitly clear that the grounds of appeal filed by the appellant company are not emanating from the order u/s. 154 of the Act. The appellant cannot use proceeding u/s. 154 to file appeal against the order u/s. 200A of the Act. Thus, the appeal on this issue is not admissible and therefore, dismissed.

16. Thus, the appeal filed by the appellant is Dismissed u/s. 250 read with section 251 of Income tax Act, 1961."

5. The assessee being aggrieved with the orders of the CIT(Appeals), NFAC has carried the matters in appeal before us.

6. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

7. Ostensibly, the assessee has assailed the respective orders of the CIT(Appeals) on the solitary ground that he had erred in failing to appreciate that as the levy of late fees u/s.243E of the Act by the DCIT, CPC-TDS for the period prior to 01.06.2015 was in the nature of a "mistake apparent from record"; thus, the same was rectifiable u/s.154 of the Act. However, we find that the observation of the CIT(Appeals), NFAC that as per the provisions of Section 154 of the Act, rectification of a mistake can be made only upto four years from the end of the financial year in which the order sought to be rectified was passed, has not been assailed by the assessee before us.

8. Be that as it may, we find that as observed by the CIT(Appeals), NFAC and, rightly so, as per sub-section (7) of Section 154 of the Act, as no amendment under the said section shall be made after expiry of four years from the end of the financial year in which the order sought to be rectified was passed, therefore, the applications filed by the assessee seeking rectification of the orders passed by the DCIT, CPC-TDS u/s.200A of the Act on 06.09.2014 by filing rectification letters dated 02.02.2022 for

the aforementioned respective years were in itself not maintainable. For the sake of clarity, sub-section (7) of Section 154 of the Act is culled out as under:

> "(7) Save as otherwise provided in section 155 or sub- section (4) of section 186, **no amendment under this section shall be made after the expiry of four years from the end of the financial year in which the order sought to be amended was passed**."
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> **(emphasis supplied by us)**

We, considering the aforesaid mandate of law, find no infirmity in the view taken by the CIT(Appeals), NFAC that as the applications filed by the assessee after expiry of more than seven years from the end of the financial year in which the order was sought to be rectified u/s. 154 of the Act were in itself barred by limitation, therefore, the same were not maintainable.

9. At the same time, we are of the view that the CIT(Appeals), NFAC having held the applications filed by the assessee appellant as not maintainable u/s.154 of the Act ought not to have proceeded any further on the issue that as to whether or not the subject matter of the application was amenable for rectification under the aforesaid statutory provision. We, thus, on the basis of our aforesaid deliberations, finding no infirmity in the view taken by the CIT(Appeals) that the applications filed by the assessee appellant u/s.154 of the Act were not maintainable, thus, uphold his order.

10. Resultantly, the captioned appeals filed by the assessee are dismissed in terms of our aforesaid observations.

Order pronounced in open court on 14th day of August, 2023.

Sd/-	Sd/-
ARUN KHODPIA	**RAVISH SOOD**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 14th August, 2023
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आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT, Raipur-1 (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.