IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.

BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A. No.46/Asr/2023
Assessment Year: 2012-13

First International Business Ltd. Jalandhar [PAN: -AAACF7969G] **(Appellant)**	Vs.	ITO-WardII (1), Jalandhar **(Respondent)**

Appellant by	None
Respondent by	Sh. Manoj Aggarwal, Sr. DR

Date of Hearing	14.09.2023
Date of Pronouncement	20.09.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the ld. Commissioner of Income Tax (Appeals), NFAC, Delhi,[in brevity the 'CIT (A)'], order passed u/s 250 of the Income Tax Act 1961, [in brevity 'the Act'] for A.Y. 2012-13. The impugned order was emanated from the order of the ld. ITO Ward-Ward II (1),Jalandhar, [in brevity 'the AO'] order passed u/s 154of the Act.

2. The assessee has taken the following ground:

"1. That having regard to the facts and the circumstances of the case, Ld. CIT(A) ought to have held that there was no mistake apparent on record and therefore, rectification Order passed by Ld. AO u/s 154 of Income Tax Act, 1961 is unsustainable in law.

2. That Ld. CIT(A) has failed to appreciate that reimbursement of freight, loading/unloading charges to the associate concern are not in the nature of payment for any sum for carrying out any work and therefore, the reimbursement of expenses is outside the purview of section 194C of the Income Tax Act, 1961.

3. That Ld. CIT(A) has failed to appreciate that reimbursement of freight, loading/unloading charges to the associate concern is not any payment for the services rendered by the associate concerns and therefore, has erre'd in law and on the facts and circumstances of case in confirming disallowance of Rs. 10,07,935/- made by the Ld. AO.

4. That the appellant craves leave to amend, alter or add to the above grounds of appeal, before the appeal is heard or disposed off."

3. When the appeal was called for hearing, no one appeared on behalf of assessee to represent his case. There is no application for seeking adjournment either. On perusal of record, we find that the hearing is scheduledon 14/09/2023. Previously the dates were fixed number of times. In view of the above and considering the nature of dispute, we proceed to dispose the appeal*ex-parte qua* the assessee after hearing the learnedDR and on the basis of material available on the record.

4. Brief facts as culled out from the records are that the assessment was completed U/s 143(3)making addition amount to Rs. 120,000/- on account of fall in G.P. Rate. After completion of assessment U/s 143(3), the ld. AO had noticed in 3CD report of Balance Sheet the assessee was contravening Section 40(a)(ia) of the Act amount to Rs. 10,07,395/- for payment of freight charges to related party without deduction of TDS and payment of interest amount to Rs. 47,509/- to TATA Capital Finance Ltd without deducting TDS. The notice U/s 154 wasissued. None was present on behalf of the assessee. The *exparte* order was passed with addition of amount to Rs. 10,07,395/- &amount to Rs. 47,509/- which works out total amount to Rs. 10,54,904/- with the total income of the assessee. Aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) upheld the assessment order. Being aggrieved, the assessee filed an appeal before us.

5. The ld DR vehemently argued and relied on the orders of the revenue authorities. The ld. DR has drawn our attention in appeal order paragraph 4 which is reproduced as below.

> *"4. In the first Ground of appeal the appellant contended that the order passed u/s 154 is unsustainable in law because there was no mistake apparent from record. In the written submissions made it is argued that the order u/s 154 has been passed by ignoring facts on record and also on the basis of*

incomplete facts on record. It is further argued that the AO has failed to appreciate that provisions of section 194C does not get attracted to Loading & Unloading charges included in amount of Rs. 10,07,935/- paid to the associate concern. If it was not so, then investigation was required so as to ascertain whether provisions of section 194C get attracted to the payment of Freight, Loading & Unloading charges paid to the associate concern before making addition of Rs. 10,07,935/- u/s 40(a)(ia) of the Act.

4.1 I have carefully gone through the submissions filed by the assessee and the rectification order passed by the AO. The AO noticed from the assessment record that the assessee paid certain amounts in the form of interest and loading and unloading charges but not deducted the tax which was under obligation to deduct under the provisions of the Act. It transpires from the record that the fact of payment and non deduction of tax thereon was apparent on record. No further enquiry was required to find out whether tax was deducted by the assessee or not. Therefore, the AO issued a rectification notice proposing the rectification sought to be made in the assessment order. However, it is seen from the record that the assessee chose not to reply. Assessee could have taken objection before the AO against the proposed rectification and also explain other issues if any. Having not done so, the company is contesting the very proposal of the AO to pass rectification order on technical grounds. Reliance is placed by the appellant on some cases.

4.2 I have carefully examined the arguments of the appellant. There is no dispute that assessee paid certain amounts in the

form of interest and loading and unloading charges but not deducted the tax which was required to be deducted under the provisions of the Act. No further enquiry was required to find out whether it was deducted or not. The provisions of deduction of tax on such payments are mandatory under the Act. In the circumstances, I find no reason to hold that there was no mistake apparent on record. Therefore, the action of rectification of mistake by passing order u/s 154 of the Act by the AO is in under.

6. We heard the submission of the ld. DR, peruse the orders of revenue authorities and considered the documents available in the record. First, we adjudicate the Ground 1 which is legal in nature and challenged the jurisdiction of the ld. AO related addition U/s 154. The Section 154 is delt with rectification apparent from the record. For clear understanding about the application of Sec 154, we respectfully relied on the order of Hon'ble Apex Court in the case of **T.S. Balaram, ITO v. Volkart Brothers [1971] 82 ITR 50** wherein the Hon'ble Supreme Court has held as follows:

"From what has been said above, it is clear that the question whether section 17(1) of the Indian Income-tax Act, 1922, was applicable to the case of the first respondent is not free from doubt. Therefore, the Income-tax Officer was not justified in thinking that on that question there can be no two opinions. It was not open to the Income-tax Officer to go into the true scope of the relevant provisions of the Act in a proceeding under section154 of the Income-tax Act, 1961. 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. As seen earlier, the High Court of Bombay opined that the original assessments were in accordance with law though in our opinion the High Court was not justified in going into that question. In Sathyanarayan Laxminarayan Hegde v. Mallikarjun BhavanappaTirumale [1960] 1 SCR 890, this court while spelling out the scope of the power of a High Court under article 226 of the Constitution ruled that an error 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 - see SidhramappaAndannappa Manvi v. Commissioner of Income-tax[1952] 21 ITR 333 (Bom.) The power of the officers mentioned in Section154 of the Income-tax Act, 1961, to correct "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." In this case, it is not necessary for us to spell out the distinction between the expressions "error apparent on the face of record" and "mistake apparent from the record". But suffice it to say that the Income-tax Officer was wholly wrong in holding that there was a mistake apparent from the record of the assessments of the first respondent."

The ld. AO considered the debatable issues in the order U/s 154 and both the issues were not the part of the assessment which was framed U/s 143(3) of the

Act. The Sec 154 cannot be read alone. It is to be read with Sec 143(3) of the Act in this case. In our considered view the ld. AO has acted beyond the jurisdiction. We dismissed the order passed U/s 154 and quashed the appeal order.

Accordingly, **Ground no-1** of the assessee is allowed. **Ground no-2 & 3** are remained only for academic purposes. The **Ground no-4** is general in nature.

7. In the result, the appeal of the assessee **ITA No. 46/Asr/2023** is allowed.

Order pronounced in the open court on 20.09.2023

Sd/-	**Sd/-**
(Dr. M. L. Meena)	**(ANIKESH BANERJEE)**
Accountant Member	**Judicial Member**

AKV

Copy of the order forwarded to:

(1)The Appellant
(2) The Respondent
(3) The CIT
(4) The CIT (Appeals)
(5) The DR, I.T.A.T.

True Copy
By order