

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI**

**BEFORE**

**DR. BRR KUMAR, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 191/Del/2023  
Asstt. Year: 2013-14

Delhi Policy Group (reg.) Core 5-A, 1 <sup>st</sup> Floor, India Habitat Centre, Lodhi Road, Delhi – 110 003 PAN AAATD3402H (Appellant)	Vs.	ITO(E), Ward1(3) Delhi.  (Respondent)
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Assessee by:	Shri S. Krishnan, Advocate
Department by:	Shri Vivek Kumar Upadhyay, Sr. DR
Date of Hearing:	29.08.2023
Date of pronouncement:	26.10.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order dated 28.11.2022 of the Ld. Commissioner of Income Tax (Appeals) NFAC, Delhi ("**CIT(A)**") pertaining to Assessment year ("**AY**") 2013-14.

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

- "1. That the order dated 28.11.2022 passed u/s. 250 of the Income Tax Act, 1961 ("Act") by the National Faceless Assessment Centre, Delhi ("Ld. CIT(A)"), upholding the addition of Rs. 54,03,420 by an order u/s 154 of the Act and the resultant demand of Rs. 17,80,181/- raised by the Ld. Assessing officer, is bad in law and liable to be quashed.

2. *That the Ld. CIT(A) has erred on facts and in law in making the said addition as the assessee is registered u/s 12A of the Income Tax Act, 1961 and therefore is entitled to the benefit u/s 12A/12AA of the Income Tax Act, 1961. However, the same was denied to the assessee by not rectifying the clerical mistake committed by the assessee at the time of online filing of its ITR for AY 2013-14.*
3. *That the Ld. AO as well as Ld. CIT(A) have failed to consider the fact that it was the first year in which the assessee filed its ITR electronically via Income Tax Portal and that, the clerical mistake was committed as the assessee was not well versed with the newly applicable procedure of online return filing system.*
4. *That the Ld. CIT(A) has erred on facts and in law as basic principles of natural justice as well as the doctrine of substance has been overlooked and the claim of the assessee is wrongfully denied as the Ld. CIT(A) failed to consider the fact that the registration u/s 12A remains valid in the case of the assessee and the benefit has not been denied to the assessee in any of the previous year(s) as well as in the subsequent years and if the said clerical error was not committed in filing of the ITR for AY 2013-14, then there exist no other reason due to which the said benefit u/s 12A would have been denied to the assessee.”*

3. Briefly stated, it is a case of rejection of assessee's claim under section 12A/12AA of the Income Tax Act, 1961 (**the “Act”**) for AY 2013-14 for the reason that the assessee inadvertently omitted to show in the return that 12A registration had been obtained by it. The assessee filed rectification application on 15.01.2018 under section 154 of the Act which vide order dated 22.2.2018 the Ld. Assessing Officer (**“AO”**) rejected saying that benefit of exemption under section 12A/12AA cannot be allowed as there is no claim for the same in the return of income which could have been rectified by filing revised return. This has not been done.

4. Aggrieved, the assessee filed appeal before the Ld. CIT(A) who dismissed the appeal of the assessee by recording the following findings:-

*“4. I have gone through the facts of case and material available on record. The issue in appeal is fresh claim of benefit under section 12AA of Income Tax Act, 1961 via rectification application under section 154 of Income Tax Act, 1961. There was no scrutiny assessment in this case.*

5. *Similar issue has come up before ITAT Chandigarh in the case of Harinder Singh vs ITO reported in [2012] 17 Taxmann.com/193 (Chd). In this case, the assessee filed his return claiming exemption under section 10(37) in respect of*

*enhanced compensation on acquisition of land. The assessee also claimed credit for a sum being the tax deducted at source in respect of interest income declared in the return of income. The Assessing Officer processed the case under section 143(1) without making any adjustment to the income disclosed by the assessee and a refund was accordingly issued. Thereupon, the assessee filed an application under section 154 contending that interest shown by him in the return of income was received by him under section 28 of the Land Acquisition Act and not under section 34 thereof and therefore the interest so received by him under section 28 was part of the enhanced compensation, received in the year under appeal. It was also his case that since the enhanced compensation was exempt from tax under section 10(37), the interest being part of the enhanced compensation was also exempt from tax and, therefore, not liable to tax at all in the year under appeal. According to the assessee, it was a case where mistake was apparent from assessment order and, thus, order so passed was liable to be rectified. The Assessing Officer, however, rejected the assessee's application. On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer. On appeal before Hon'ble ITAT, Hon'ble ITAT has held that*

*"8. The assessee appellant intends that the rectification application, wherein details including receipt of full interest have been furnished and a new contention made that such interest received u/s 28 of the Law Acquisition Act, which is exempt u/s 10(37) of the Income-tax Act, 1961, be considered and treated as return of income, wherein foundational material exists, for the purpose of rectification of mistake apparent from the records. Such contention of the appellant is contrary to the scheme of Income-tax Act, 1961 and relevant provisions of Section 139 and 154 of the Act. The appellant did not furnish such details and material in the return of income, which was processed and accepted as such by the AO u/s 143(1) of the Act. It is undisputed fact that such materials or claim of the assessee is not available in the assessment record, before the AO, at the time the return of income was processed by the AO. Further, the AO has no jurisdiction u/s 143(1) of the Act to make adjustment to the returned income. In this case, such new material was not examined and considered y the AO at the time of processing the return filed by the appellant. Thus the intended rectification requires interpretation of the provisions of Section 28 of the Law acquisition Act, 1894, Section 154 and 143(1) of the Income-tax Act, 1961 and determination of existence of foundational facts needs detailed investigation and verification and, hence, the case of the appellant patently falls beyond the ambit of the provisions of Section 154 of the Act but is the subject matter of scrutiny assessment within the meaning of Section 143(3) or reassessment u/s 147 r.w.s. 148 of the Act. In short, there does not exist any mistake in the intimation issued by the AO u/s 143(1) of the Act, much less the mistake apparent from record. Accordingly, such alleged mistake is not self-evident and consequently, cannot be rectified u/s 154 of the Act."*

6. *In this case also, the A.O. did not have any power to grant deduction under section 12AA of Income Tax Act, 1961 while processing the return of income. There was no claim before the AO at the time of processing of return. It is beyond the power under section 143(1) of Income Tax Act, 1961 to admit such claim. Further claim in itself is not self evident so it is not rectifiable and t this error is beyond the scope of section 154 of Income Tax Act, 1961."*

5. The assessee being dissatisfied is before the Tribunal and all the grounds relate thereto.

6. The Ld. AR submitted that the assessee obtained registration under section 12A on 30.12.1993. Since then it has filed its return on that basis for past several years which have been accepted by the Department. However, in return for AY 2013-14 by mistake the assessee mentioned "no" in the column mentioning whether the society is registered under section 12A. It is pointed out that no change in the object clause or activities has taken place. Total income of Rs. 54,03,419/- has been applied by the assessee for charitable purposes and all other requirements including investment of funds in accordance with section 11(5) have been adhered to. The Ld. AR contended that a procedural error cannot override a substantive provision of law and if the assessee is recognised under section 12A, the benefit of such recognition cannot be denied. Our attention was also drawn to CBDT Circular No. 14(XI-35) dated 11.04.1955. The Ld. AR referred to the written submissions made before the Ld. CIT(A) vide letter dated 16.3.2020, 8.3.2021 and 3.2.2022 copies of which appear at pages 1-10 of the Paper Book. The Ld. AR submitted that registration under section 12A has been granted in the preceding AY 2012-13 as also in the succeeding AY 2014-15. Therefore, it is urged that denial of registration under section 12A only in the AY 2013-14 in between is not justified.

7. The Ld. DR supported the order of the Ld. AO/CIT(A)

8. We have given our careful thought to the submission of the parties and perused the record. It is not in dispute that the assessee is a charitable trust registered under section 12A of the Act since 30.12.1993. It is also undisputed that in the preceding as also succeeding AY(s) the assessee enjoys the benefit of registration under section 12A. It is only in the AY 2013-14 presently under consideration that the said benefit has been denied by the Ld. AO/CIT(A). The reason is this. In the return for AY 2013-14 the assessee mistakenly mentioned "No" in the column of the ITR asking whether registered under section 12A/12AA. Perusal of the copy of ITR (page

24 of Paper Book) will reveal that the assessee clearly mentioned that the ITR is filed under section 11 and is furnished under section 139(4A) of the Act. Moreover, the assessee declared Nil taxable income after claiming Rs. 54,03,420/- as income applied for charitable purposes as well as carried forward under section 11(1) & 11(2) of the Act. The rectification application filed by the assessee has been rejected on the ground that the mistake is not apparent from the record. We are not inclined to subscribe to this view of the Revenue.

9. It is now well established that mistake apparent from the record may be one that can be gathered from the entire record of the case provided it does not call for evidence extraneous to the record. As stated earlier the assessee is a charitable trust registered under section 12A long ago and has all along been enjoying the benefits arising there-from in past years as also in the subsequent year. The case of the assessee before the Ld. AO/CIT(A) has been that it was inadvertently by clerical mistake that an incorrect fact was mentioned in the ITR at the time of online filing for which the assessee sought rectification. The assessee did not seek registration under section 12A/12AA in its rectification application under section 154. It was the request of assessee to rectify the inadvertent mistake which has crept in the ITR filed by it online. The Ld. AO/CIT(A) misread the assessee's request and proceeded with the erroneous impression that the assessee is seeking the fresh claim of benefit of exemption under section 12A/12AA in its rectificatory application.

10. In the case of Harinder Singh v. ITO (2012) 17 taxmann.com 193 (Chd) the assessee in his rectification application had raised a new contention that interest received under section 28 of the Land Acquisition Act exempt under section 10(37) be considered and treated as return of income. The Tribunal held that the assessee's request required interpretation of Section 28 of Land Acquisition Act which patently falls beyond the ambit of section 154 of the Act. In our humble opinion, ratio of this decision is inapplicable to the facts of the assessee's case. The

assessee's claim of exemption under section 11 coupled with the ITR furnished under section 139(4A) of the Act clearly establishes that in its rectificatory application under section 154, the assessee was not making any fresh claim of benefit under section 12AA of the Act as alleged by the Ld. AO/CIT(A).

11. We therefore, set aside the order of the Ld. CIT(A) and direct the Ld. AO to allow the benefit of registration under section 12A to the assessee in accordance with law and amend his order accordingly.

12. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

**Order pronounced in the open court on 26<sup>th</sup> October, 2023.**

**sd/-**  
**(DR. BRR KUMAR)**  
**ACCOUNTANT MEMBER**

**sd/-**  
**(ASTHA CHANDRA)**  
**JUDICIAL MEMBER**

Dated: 26/10/2023

**Veena**

Copy forwarded to -

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

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	