आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
'' C'' BENCH, AHMEDABAD

BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No. 501/AHD/2020**
निर्धारण वर्ष/Asstt. Year:2018-2019

Markand Induprasad Bhatt, 2, Panchsheel Enclave, Nr. Sundarvan, Satellite Road, Ahmedabad. **PAN: AAUPB1995M**	Vs.	D.C.I.T., CPC, Bangalore.

(Applicant)		**(Respondent)**

Assessee by	:	Shri Biren Shah, A.R
Revenue by	:	Shri V.K. Singh, Sr. D.R

सुनवाई की तारीख/**Date of Hearing : 26/05/2022**
घोषणा की तारीख **/Date of Pronouncement: 15/07/2022**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-8, CPC, Bangalore, dated 08/09/2020 arising in the matter of assessment order passed under s. 154 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2018-2019.

2. The assessee has raised the following grounds of appeal;

1. On the facts and in the circumstances of the case of the appellant, the Ld. CIT(A) has erred in not directing AO to reduce Income under the head" Salary" to the extent of Rs 5,32,603/- inadvertently offered to tax by appellant.

1.1 On the facts and in the circumstances of the case of the appellant, the Ld. CIT(A) ought to have appreciated that correct basic taxable salary income of appellant was Rs. 24,06,23,088/- as against Rs.24,11,55,691/- offered to tax inadvertently. He ought to have appreciated that correct salary income was as per Form 16 issued by employer of appellant.

1.2 On the facts and in the circumstances of the case of the appellant, the Ld. CIT(A) erred in rejecting contention of appellant on the ground that appellant ought to have filed revised return of income within due date if there is any mistake in filing return of income. He ought to have appreciated that AO is bound to compute correct income as per provisions of the Act and tax cannot be levied at higher amount due to error made while filing return of income.

1.3 On the facts and in the circumstances of the case of the appellant the Ld.CIT(A) ought to have appreciated that expression "any mistake" appearing in provisions of section 154 of the Act extends to amendment of intimation u/s.143(1) of the Act and mistake committed by appellant as held by Hon'ble Delhi court in the case of Pawan Kumar Agarwal in ITA No.199/2014 dated 06/05/2014.

The appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.

3. The sole issue raised by the assessee is that the Ld. CIT-A erred in upholding the order passed u/s 154 of the Act made by the AO, CPC Bangalore on account of rectification of mistake apparent from the records.

4. The facts in brief are that the assessee is an individual and declared income of Rs. 24,26,62,205/- under the head salary and capital gain income in the return of income filed u/s 139 of the Act for the year under consideration. The assessee after a certain period of time realized that he had offered the salary income in the ROI by exceeding Rs. 5,32,603/- mistakenly which is over and above the actual salary income. the actual salary income was of Rs. 24,00,39,600/- (including perquisite of Rs, 39,600/-) as evident from Form 16 and 26AS.

4.1 The assessee, therefore was of the view that the mistake was apparent from records on the grounds that the income was offered higher than the actual income.

Therefore, he filed an application u/s 154 of the Act to rectify the aforesaid mistake before CPC, Bangalore.

4.2 However, the CPC Bangalore passed the order under section 154 of the Act without rectifying the mistake as informed by the assessee.

5. Aggrieved with the order of CPC Bangalore, assessee has filed the appeal before the Ld. CIT-A. The assessee before the Ld. CIT-A submits that the provisions of section 154 of the Act, provide the power to income tax authorities to amend any intimation or deemed intimation under section 143(1) of the Act to rectify the mistake apparent from record on its own motion.

6. As such, the details about the salary appearing in form 16 was filed by the employer as well as details of TDS appearing in Form 26AS was available to the department. Therefore the department/income tax authority as referred u/s 119 of the Act could have corrected the mistake.

7. However the Ld. CIT-A disregarded the contentions of the assessee by observing that the employer has not deducted the TDS u/s 192 of the Act on each and every payment of salary made to employee whereas gross salary could be more or less than the amount of salary as representing in the form 16/26AS. The Ld. CIT-A was also of the view that the assessee had an opportunity to revise his return of income u/s 139(5) of the Act to rectify the mistake. However, he failed to do so.

7.1 The Ld. CIT-A also noted that the assessee has submitted a new material contending that he had received the reimbursement of salary amounting to Rs. 5,32,602/- in the year under consideration. As per the assessee the reimbursement of salary amounting to Rs. 5,32,602/- pertains to the immediate preceding year which was also offered to tax in that year under the head salary income. However, the CIT-A was of the view that the fact of reimbursement of salary amounting to

Rs. 5,32,602/- of the earlier year requires detailed scrutiny and verification which would be an additional burden on the tax administration.

7.2 The Ld. CIT-A thus was of the view that the mistake was made by the assessee himself which could have been rectified by filing the revised return of income without putting the additional burden on the department to review/verify.

8. Being aggrieved by the order of the Ld. CIT-A the assessee is in appeal before us.

9. The Ld. AR before us filed a paper book running from pages 1 to 17 and contended that there is a mistake apparent from record which needs to be rectified under the provisions of section 154 of the Act.

10. On the other hand, the Ld. DR relied on the order of the authorities below.

11. We have heard the rigorous arguments of both the parties and perused the materials available on record. The case on hand is that the assessee for the year under consideration has offered his salary income of Rs. 24,26,62,205/- which was more than the actual salary receipt of Rs. 24,00,39,600/- as appearing in form 16/26AS. The assessee offered the additional salary income by the sum of Rs. 5,32,603/- only inadvertently. To rectify the mistake, the assessee filed an application u/s 154 of the Act to the CPC, Bangalore with a view that the said mistake was apparent from record.

11.1 However, we note that the power of rectification u/s 154 of the Act can be exercised only if there is a mistake apparent from the record which is one of the pre-condition meaning thereby the mistake should be apparent, obvious from the record. In other words, in order to attract the power to rectify the mistake u/s 154, it is not sufficient that there is merely a mistake in the order sought to be rectified.

The mistake could be rectified if the same is apparent from the record. The plain meaning of the word "apparent" is that it must be something which appears to be so exact and incapable of argument or debate. It, therefore, follows that a decision on a debatable point of law or fact or failure to apply the law to a set of facts, which remain to be investigated, cannot be corrected by way of rectification. 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 be conceivably two opinions; a decision on a debatable point of law is not a mistake apparent from record.

11.2 Thus we are of the view that the salary disclosed by the employer of the assessee while filing the form 16 of the employee, it is evident that the assessee has received the salary amount on which the TDS is deducted if the same are not taken into consideration, then the employer is questionable upon the less TDS deduction and deposit.

11.3 We further note that the lower authorities has taken a view that each and every payment by the employer to the employee as salary cannot become the part of TDS as the employer can deduct less TDS/not deducted due to amount of payment was too low/not paid regularly. However, we find that the ld. CIT-A did not bring on record to sustain the view as discussed above.

11.4 Moreover, form 16 issued by the employer for a year is a very relevant document through which assessee file the return of income declaring income under the head salary, which has been ignored by the lower authorities.

11.5 The assessee has the opportunity to file revise return of income by following the provision of section 139(5) of the Income Tax, however he lost the opportunity but that does not mean that the mistake made by the assessee cannot be corrected. As such the provisions of section 154 of the Act are applied for both i.e. for assessee

as well as income tax authority referred u/s 119 of the Act. Thus we hold that there is a mistake apparent from record which needs to be rectified under the provisions of section 154 of the Act. We direct accordingly. Hence the ground of appeal of the assessee is allowed.

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

Order pronounced in the Court on 15/07/2022 at Ahmedabad.

Sd/-	**Sd/-**
(SUCHITRA KAMBLE)	**(WASEEM AHMED)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated 15/07/2022
Manish