**(2000) 08 DEL CK 0011**

**In the Delhi High Court**

**Case No :** ITA 71 of 1999

Commissioner of Income Tax — APPELLANT

Vs

M/s. M.M.T.C. LTD. — RESPONDENT

**Date of Decision :** 17-08-2000

**Acts Referred:**
Income Tax Act, 1961 — Section 154, 260

**Citation :** (2000) 163 CTR 612 : (2000) 246 ITR 725 : (2000) 112 TAXMAN 647

**Hon'ble Judges :** Dr. Arijit Pasayat, C.J;D.K. Jain, J

**Bench :** Division Bench

**Advocate :** Mr. R.C. Pandey and Ms. Prem Lata Bansal, for the Appellant;

## Judgement

Arijit Pasayat, C.J.—This is an appeal u/s 260A of the Incometax Act, 1961 (in short, the Act) filed by the Commissioner of Income Tax in respect of an order of the Incometax Appellate Tribunal Delhi BenchE (in short, the Tribunal).

2. The dispute relates to assessment year 1992-93. Two appeals were filed by the assessed against the order of the Commissioner of Incometax (Appeals) [in short, CIT(A)]. An order u/s 154 of the Act was passed by the Assessing Officer holding that interest allowed to the assessed u/s 244A(1) was not allowable and had been allowed by mistake. Stand of the assessed that the action was not permissible u/s 154 was not accepted. assessed filed appeal. before CIT(A) which yielded no relief for it. On further appeal, Tribunal held that Section 154 did not apply to a case of this nature.

3. Factual position which is undisputed is as follows:-

For the assessment year in question, the return was processed u/s 143(1)(a) on 19.3.1993 on a total returned income of Rs. 1,69,71,48,952/- and total tax and interest payable was computed at Rs. 89,00,73,277/-. Total prepaid taxes were as under:

TDS. Rs. 1,23,49,024 Advance-tax Rs. 77,74,14,375 Tax paid u/s. 140A Rs.

50,28,95,272 Total: Rs. 1,29,26,58,671

Adjustment of total taxes and interest payable with total pre-paid taxes resulted in refund of Rs. 40,24,85,394/-. assessed was allowed inter- est u/s 244A(1) on the above refund. Later on, assessing officer was of the view that such allowance of interest was impermissible as this case was not covered under Explanation to clause (b) of Section 244A(1). Notice u/s 154 was served on the assessee, who raised an objection stating that clause (b) of subsection (1) of Section 244A clearly comes into operation and withdrawal of interest is not permissible u/s 154 of the Act. Reliance was also placed on a circular No. 54A dated 31.10.1989 to claim interest. Deputy Commissioner of Incometax (Spl. Range), the assessing officer, held that there was no ambiguity about the non allowability of interest and provisions of Section 244A(1) are crystal clear. Interest is not payable on refund arising out of payment other than those made as advance tax, TDS and in pursuance of notice of demand u/s 156. Accordingly, interest allowed was withdrawn. As noted above, the appeal before the CIT(A) did not yield any relief. In further appeal, the Tribunal held that this was not a case which was covered u/s 154.

In support of the appeal the learned counsel for the Revenue submitted that the Tribunal has erred in its view that Section 154 has no application. According to him, the position was clear in law and Therefore interest which has been wrongly allowed had been rightly withdrawn.

5. A bare look at Section 154 of the Act makes it clear that a "mistake apparent from the record" is rectifiable. In order to attract the application of Section 154, the mistake must exist and the same must be apparent from the record. The power to rectify the mistake, however, does not cover cases where a revision or review of the order is intended. "Mistake" means to take or understand wrongly or inaccurately; to make an error in interpreting; it is an error; a fault, a misunderstanding, a misconception. "Apparent" means visible; capable of being seen, obvious; plain. It means "open to view, visible, evident, appears, appearing as real and true, conspicuous, manifest, obvious, seeming". A mistake which can be rectified u/s 154 is one which is patent, which is obvious and whose discovery is not dependent on argument or elaboration. In our view amendment of an order does not mean obliteration of the order originally passed and its substitution by a new order. What the assessed intends to do in the present case is precisely the substitution of the order which according to us is not permissible under the provisions of Section 154 and, Therefore, the Tribunal was justified in holding that there was no mistake apparent on the face of the record. In order to bring an application u/s 154, the mistake must be "apparent" from the record. Section 154 does not enable an order to be reversed by revision or by review, but permits only some error which is apparent on the face of the record to be corrected. Where an error is far from self-evident ,it ceases to be an apparent error. It is, no doubt, true that a mistake capable of being rectified u/s 154 is not confined to clerical or arithmetical mistakes. On the other hand, it does not cover

 

any mistake which may be discovered by a complicated process of investigation, argument or proof. As observed by the Apex Court in Master Construction Co. (P) Ltd. Vs. State of Orissa, [1966] 17 STC 360, an error which is apparent from record should be one which is not an error which depends for its discovery on elaborate arguments on questions of fact or law. Similar view was also expressed in Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, . It is to be noted that the language used in Order XLVII, Rule 1, of the Code or Civil Procedure, 1908 (in short the CPC) is different from the language used in Section 154 of the Act. Power is given to various authorities to rectify any mistake "apparent from record" u/s 154 of the Act. In the Civil Procedure Code, the words are "an error apparent on the face of the record". The two provisions do not mean the same thing. The power of Tribunal in Section 154 to rectify "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. [See. T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, ]. "Mistake" is an ordinary word but in taxation laws, it has a special significance. It is not an arithmetical error which, after a judicious probe into the record from which it is supposed to emanate are discerned. The word "mistake" is inherently indefinite in scope, as to what may be a mistake for one may not be one for another. It is mostly subjective and the dividing line in border areas is thin and indiscernible. It is something which a duly and judiciously instructed mind can find out from the record. In order to attract the power to rectify u/s 154, it is not sufficient if there is merely a mistake in the orders sought to be rectified. The mistake to be rectified must be one apparent from the record. A decision on a debatable point of law or a disputed question of fact is not a mistake apparent from the record. The plain meaning of the word "apparent" is that it must be something which appears to be so ex facie and it is 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 remains to be investigated cannot be corrected by way of rectifications. On the facts of the present case we find that there was no mistake apparent from the record which could be rectified u/s 154 of the Act. The questions proposed deal with conclusions on facts giving rise to no question of law.

6. Tribunal recorded the following findings with reference to the submissions made before it:-

10. "Learned Counsel for the assessed invited our attention on the provision of the Act. It was stated that clause (b) of Section 244-A(1) provides that where refund is out of tax other than advance tax or tax treated as paid u/s 199 or tax collected at source, the interest is to be paid @ 1 per cent for every month or part of a month comprised in the period starting from the date of payment of such tax or penalty up to the date of payment of such tax or penalty up to the date on which the refund is granted. It was clarified in the Explanation that date of payment of tax and the penalty means the date on and from which amount of

 

tax or penalty specified in the notice of demand is paid in excess of such demand.

11. It was stated that there is absolutely nothing in the section by which interest is denied on the payments made u/s 140-A. Besides, it cannot be said that 244 interest is allowable only on those excess payments of tax which are made on consequence of the service of notice of demand/intimation. The language of the Act is clear. There is no ambiguity in it. As per the interpretation of the Section assessed is clearly entitled to get the interest on the excess amount paid.

12. Further alternatively it was argued that the interest allowed cannot be withdrawn by resorting to the provisions of section 154 of the Act. Reference was made to the decision of the Apex Court rendered in the case of T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, wherein the Hon''ble Supreme Court has held that a mistake apparent on the record must be and obvious and patent mistake and not something which can be established by a long drawn process of reasoning of points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from the record. Reference was also made to the departmental circular No. 549 dated 31.12.1989 issued by the CBDT wherein it is stated that interest is to be allowed on the basis of refund due as a result of intimation issued u/s 143(1)(a).

13. It transpires from the perusal of the impugned order that an attempt was made to make interpretation of Section 244-A. There is no clear cut mandate in the Section by which assessing officer can deny interest to the assessed on the amounts paid u/s 140-A. Therefore the question apropos the chargeability of interest is a debatable question. Hon''ble Supreme Court has held that debatable questions falls beyond the scope of 154. As such, in our opinion, assessing officer was snot correct in withdrawing the amount of interest by resorting to the provisions of Section 154 of the Act. We hold that the case of assessed falls beyond the ken of Section 154."

7. In view the factual position highlighted above the Tribunal was perfectly justified in holding that Section 154 had no application. Whether in a particular case Section 154 is applicable would depend on the facts and there cannot be a straight jacket formula laid down. In view of the analysis made and the conclusion drawn by the Tribunal that question apropos the chargeability of interest is debatable question, in this case no question of law arises. This is not a case to which provisions of the Section 260A of the Act can be said to be applicable. We do not entertain the appeal which is accordingly dismissed.