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### Omission to claim deduction is not mistake apparent from record

The Madras High Court has rendered its decision that, omission to claim a deduction (which requires verification) in the income-tax return is not a mistake apparent from record, which could be rectified under section 154 of the Income-tax Act, 1961.

#### Background:

- The taxpayer<sup>1</sup> while filing its income-tax return for the Financial Years (FY) 2002-03 and 2003-04, corresponding to Assessment Years (AY) 2003-04 and 2004-05, omitted to claim deduction under section 43B of the Income-tax Act, 1961 (ITA) in respect of interest paid to a bank.
- The Assessing Officer (AO) completed the audit proceedings based on the computation of income filed by the taxpayer along with the income-tax return.
- Subsequently, the taxpayer, after noticing the omission to claim deduction, filed applications with the AO under section 154 of the ITA to rectify this mistake.
  - The taxpayer had not filed a revised return under section 139(5) of the ITA.

Section 139(5) of the ITA enables a taxpayer to file revised return in case any omission or wrong statement has been made in the original return. The same can be done before the end of the assessment year or before completion of audit, whichever is earlier.

Section 154 of the ITA, inter alia, empowers an AO to amend an audit order passed by the AO, in order to rectify any mistake apparent from the record.

- The AO rejected the rectification petitions on the grounds that the mistake was not apparent from the record as it involved debatable point of law.
- On appeal, the Commissioner of Income-tax (Appeals) [CIT(A)] upheld the AO's order.
- On further appeal, the Chennai Bench of the Income-tax Appellate Tribunal (ITAT) upheld the CIT (A)'s order on the basis that the audit was completed based on the computation of income filed by the taxpayer and, there was no mistake apparent from record in the audit.
- Aggrieved by the ITAT's order, the taxpayer filed an appeal before the Madras High Court (HC).

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<sup>1</sup> Nagaraj & Co. (P.) Ltd. v. ACIT [2020] 117 taxmann.com 618 (Madras HC)

## Decision of the Madras HC:

- The HC noted that the following question of law arose for its consideration:
  - Whether on the facts and circumstances of the case, the taxpayers claim for deduction (under section 43B of the ITA) of interest paid to bank, could be rectified under section 154 of the ITA?
- The HC noted the following:
  - Whether interest payment claimed by the taxpayer was allowable or not, was a matter for investigation and there was no element of mistake apparent from the record.
  - The statement of account disclosing interest payments (as filed by the taxpayer) did not tally with the computation of income filed along with the rectification applications.
  - The Supreme Court<sup>2</sup> in context of Rule 83 of the Orissa Sales Tax Act (similar to section 154 of the ITA) had held that arithmetical mistake was a mistake of calculation; a clerical mistake was a mistake in typing or writing. Further, an error apparent on the face of record does not include an error which depends for its discovery, on elaborate arguments on questions of fact or law.
  - The Supreme Court in another case<sup>3</sup> had held that omission of relief during audit proceedings was not to be considered as ‘mistake apparent from the record’ for the purposes of section 154 of the ITA.
  - The Madras HC<sup>4</sup> in an earlier case had held that the expression ‘mistake apparent from the record’ was to be construed to be a mistake which was very clear, distinct and apparent. An issue which was debatable could not be decided under section 154 of the ITA.

Based on the above and on the following basis, the HC held that the omission to claim interest deduction under section 43B of the ITA did not qualify as a mistake apparent from record which could be rectified:

- Rectification of mistake under section 154 of the ITA could be sought only when such mistake was apparent from record. The mistake should be obvious and its discovery should not be dependent on further investigation.
- The claim of interest deduction under section 43B of the ITA, was a debatable issue and required further investigation. Unless and until a complete investigation was done by the AO, the quantum of deduction for interest payments could not be ascertained. Therefore, the omission to allow deduction under section 43B of the ITA is not a mistake apparent from the record as claimed by the taxpayer
- In case of such omission, the only remedy available was to file a revised return under section 139(5) of the ITA.

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<sup>2</sup> Master Construction Private Limited v. State of Orissa AIR 1966 SC 1047 (SC)

<sup>3</sup> Anchor pressings (P) Ltd. v. CIT 3 SCC 439

<sup>4</sup> CIT v. Lakshmi Villas Bank [2010] 329 ITR 0591 (Madras HC)

## Comments:

- This ruling affirms the following principles:
  - Mistakes which are patent, obvious and whose discovery is not dependent on any further investigation, can be rectified under section 154 of the ITA.
  - The only remedy available in case of omissions requiring further investigation is by way of filing of revised return under section 139(5) of ITA.



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