

AO made apparent mistake by treating taxpayer as assessee in default only on basis of admission of taxpayer: ITAT

Summary – The Visakhapatnam ITAT in a recent case of Sri Chaitanya Educational Society., (the Assessee) held that where assessee had not incurred any amount towards building constructions for year under consideration and Assessing Officer, without examining applicability of provisions of section 194C, merely on basis of admission of assessee that there was lapse in TDS Compliance in respect of building construction, held assessee as assessee in default under section 201(1) and 201(1A), said mistake being a mistake apparent from record, needed to be rectified under section 154

Facts

- During the course of survey at premises of the assessee-society, the Secretary of the assessee society had admitted that there was a lapse in respect of TDS compliance towards building constructions and, therefore, he would comply with the TDS provisions as per law.
- Consequently, the Assessing Officer computed short levy of TDS and interest under section 201.
- The assessee filed a rectification application under section 154 and submitted that there was a mistake apparent on the record in respect of TDS on building constructions as the impugned payment was not incurred during the relevant year.
- The Assessing Officer stated that since assessee had accepted TDS liability in the course of survey proceedings, it could not disown the same now for any reasons.
- The Commissioner (Appeals) after considering the explanations of the assessee held that the assessee sought to rectify the order passed by the Assessing Officer under section 154 on the basis of fresh facts which were not before the Assessing Officer. Thus, it could not be said that the Assessing Officer had committed any mistake liable for rectification under section 154.
- On appeal:

Held

- Section 154 provides for rectification of mistake apparent from the records. As per the said section, mistake is not confined to mere clerical or arithmetical mistake. The only point is that the mistake must be obvious and patent and not involving a debatable point. In the present case on perusal of the facts available on record, it is found that the Assessing Officer had levied TDS on the opening balance of written down value of building which was constructed in the year 2005-06. The assessee had not incurred any amount towards building constructions for the year under consideration. The Assessing Officer without examining the applicability of the provisions of section 194C, merely on the basis of admission of assessee held assessee as assessee-in-default under section 201(1) and 201(1A) in respect of building construction, said mistake was a mistake apparent from the record

which needed to be rectified under section 154. The Commissioner (Appeals) without appreciating the facts rejected the appeal filed by the assessee. Therefore, the order passed by the Commissioner (Appeals) is set aside and the issue is remitted back to the file of Assessing Officer to examine whether any amount is incurred during the financial year towards building constructions; in case the amount is not incurred during the relevant financial year, the Assessing Officer cannot hold assessee as assessee-in-default under section 201(1) and 201(1A) for the assessment year 2010-11.