

RECTIFICATION of MISTAKES

UNDER I.T.
PROVISIONS
(A *Self-help Kit*)

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1. VARIOUS SECTIONS COVERING RECTIFICATION

1.1 Section 154(1) states that:

“(1) With a view to rectifying any mistake apparent from the record an income-tax authority referred to in section 116 may, -

- (a) Amend any order passed by it under the provisions of this Act;*
- (b) Amend any intimation or deemed intimation under sub-section (1) of section 143]*
- (c) Amend any intimation under sub-section (1) of section 200A*
- (d) Amend any intimation under sub-section (1) of section 206CB”*

Section 154(1) lays down that rectification should be done only when mistake is apparent from the record and by the authority who passed the order. It may be possible that an income-tax authority may commit a mistake while passing the order of assessment, appeal, revision, etc. With a view to rectifying any mistake, apparent from the record, the income- tax authority is empowered as under: -

(i) The Assessing officer is empowered to rectify any order of assessment or of refund or any other order passed by him. Further, the Assessing Officer is also empowered to amend any intimation or deemed intimation under section 143(1).

(ii) The Commissioner is empowered to rectify any order passed by him in revision under section 263 or 264.

(iii) The Commissioner(Appeals) may rectify any order passed by him under section 250.

(iv) Other Income-tax Authorities mentioned in section 116 may also amend order passed by it.

1.2 Section 154(1A) states that:

“Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided”.

Section 154(1A) lays down that rectification can be done for any matter other than the matter considered and decided in appeal/revision. Where any matter had been considered and decided in any proceeding by way of appeal or revision, rectification of such matter cannot be done by Assessing Officer under section 154. However, the matter which has not been considered and decided in the appeal/revision can be rectified under section 154.

ILLUSTRATION: -

The Assessing Officer made the following addition to the returned income of XYZ Ltd.

(i) Addition under section 43B as proof of payment was not furnished Rs. 2,50,000/-

(ii) Certain expenses claimed under section 37(1) was not treated as spent for the purpose of business Rs. 5,55,000/-

The assessee filed appeal only against the addition of Rs. 5,55,000/-. The appeal has since been decided. As regards the addition of Rs. 2,50,000/- the assessee filed an application for rectification under section 154 and furnished the proof of payment along with the application. The Assessing Officer rejected the application on the ground that the appeal in this matter has been decided and thus no rectification is possible.

SOLUTION: -

According to section 154(1A), the Assessing Officer can amend an order in relation to any matter other than the matter which has been considered and decided in appeal. Hence, any other matter which has not been considered and decided in appeal can be rectified by the Assessing Officer.

1.3 Section 154(2) states that:

“Subject to the other provisions of this section, the authority concerned-

- (a) may make an amendment under sub-section (1) of its own motion and*
- (b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee or the collector or the deductor and where the authority concerned is the [Commissioner (Appeals)], by the [Assessing] Officer also.”*

Section 154(2) lays down that the income-tax authority may make the rectification on its own motion or on application made by the assessee or the collector or the deductor bringing the mistake to the notice of the authority concerned. Where the authority concerned is Commissioner (Appeals), besides the above, such mistake can be brought to his notice by the Assessing Officer also. The Appellate Tribunal can rectify its order under section 254(2) but not under section 154, as it is not an income-tax authority.

1.4 Section 154(3) states that :

“An Amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee or the collector or the deductor shall not be made under this section unless the authority concerned has given notice to the assessee of this intention so to do and has allowed the assessee a reasonable opportunity of being heard.”

Section 154(3) lays down that opportunity of being heard is necessary if rectification results into enhancement, etc. If such rectification order has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, the authority concerned **MUST** give a notice to the assessee of its intention to do so and an opportunity of being heard must be given to the assessee.

1.5 Section 154(4) states that:

“Where an amendment is made under this section, an order shall be passed in writing by the income-tax authority concerned.”

Section 154(4) lays down that where any rectification is made under this section, an order of rectification **SHALL BE** passed in writing by the income-tax authority concerned. Refusal to make rectification shall also require an order under this section.

1.6 Section 154(5) states that :

“Subject to the provisions of section 241, where any such amendment has the effect of reducing the assessment or reducing the liability of the assessee or the deductor or the collector, the [Assessing] Officer shall make any refund which may be due to such assessee.”

Section 154(5) lays down that subject to section 241 (relating to withholding of refund) where any such amendment has the effect of reducing the assessment, the Assessing Officer **SHALL** make any refund which may be due to such assessee or the collector or the deductor.

1.7 Section 154(6) states that:

“Where any such amendment has the effect of enhancing the assessment or reducing a refund already made or otherwise increasing the liability of assessee or the deductor or the collector, the [Assessing] Officer shall serve on the assessee or the collector or the deductor a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 156 and the provisions of this Act shall apply accordingly.”

Section 154(6) lays down that where any such amendment has the effect of enhancing the assessment or reducing a refund already made, the Assessing Officer **SHALL** serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 156 and the provisions of the Income-tax Act shall apply accordingly.

1.8 Section 154(7) states that:

“Save as otherwise provided in section 155 or sub-section (4) of section 186 no amendment under this section shall be made after the expiry of four years [from the end of the financial year in which the order sought to be amended was passed.]”

Section 154(7) lays down that rectification of an order can be made only within four years from the end of the financial year in which the order sought to be amended was passed. However, this time limitation shall not apply to cases where amendment is made under section 155.

1.9 Section 154(8) states that :

“[Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made by the assessee on or after the 1st Day of June, 2001 to an income-tax authority referred to in sub-section (1), the authority shall pass an order, within a period of six months from the end of the month in which the application is received by it-

- (a) Making the amendment; or*
- (b) Refusing to allow the claim.]”*

Section 154(8) lays down that the time limit for passing an order of rectification if application for amendment made by the assessee under section 154 is a period of six months from the end of the month in which the application is received by it.

1.10 Further, section 155 lays down various provisions for extending the time limit as prescribed u/s. 154(7) under different circumstances.

2. IMPORTANT TO NOTE:

2.1 As per Citizen's charter of 2010, time limit to decide on rectification applications has been fixed at 2 months from the end of the month in which application is received.

2.2 Time limit gets freshly extended in case of rectification of rectified order:- Order sought to be amended does not necessarily mean the original order. It could be any order including the amended or rectified order. Thus for subsequent rectification, the time limit of four years shall be from the end of the financial year in which the earlier rectification order was passed.[Hind Wire Industries Ltd. V CIT (1995) 212 ITR 639 (SC)]

2.3 For time limit of rectification, the word used in section 154(7) is “ORDER” sought to be amended was passed. Since, an intimation is not an order, it implies that there is no time limit for rectification of an intimation or deemed intimation.

2.4 The power of rectification can be invoked with reference to the law prevailing at the time of the original order. The fact that subsequent decisions may lead to a different inference cannot justify rectification.[CIT V India Cements Ltd. (2000) 241 ITR 62 (Madras).]

2.5 It may be noted that if the appeal has been filed but the matter has not yet been considered and decided in appeal, the rectification is still possible.

2.6 The assessee can file an appeal or can make an application for revision under section 264 against the order of rectification passed by the Assessing Officer.

ILLUSTRATION: -

The assessment order was passed on 21-10-2003. The assessee made an application 15-11-2005 for rectification under section 154 pointing out that depreciation has not been allowed on certain assets. The rectification order was passed on 18-2-2006. The assessee made another application under section 154 on 15-05-2008 pointing out that he was entitled to get depreciation on factory building @ 10% instead of 5% allowed to him. The Assessing Officer rejected the second application for rectification as being made after the expiry of 4 years from the end of the financial year in which the original order, dated 21-10-2003 was passed.

SOLUTION: -

In the above case, the word “order” in the expression “from the date of the order sought to be amended” in section 154(7) does not necessarily mean the original order. It could be any order including the rectified order. The assessee could also apply for rectification within 4 years of the end of the previous year in which the amended order, dated 18-02-2006 was passed i.e. up to 31-03-2010. Hence, the action of the Assessing Officer was not justified.

However, had the assessee in its application dated 15-05-2008 asked for rectification on an issue which was not covered by the rectification order dated 18-02-2006 but arose from original order dated 21-10-2003, then the Assessing Officer would have been correct in rejecting that application for rectification as being made after the expiry of 4 years from the end of the financial year in which the original order, dated 21-10-2003 was passed.

3. JUDICIAL DECISIONS: -

3.1 The Supreme Court in the case of T. S. Balaram, ITO v Volkart Bros (1971) 82 ITR 40 (SC), held that; "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 the record. A look at the records must show that there has been an error and that error may be rectified; Reference to documents outside the records and the law is impermissible when applying the provisions of section 154. [CIT v Keshri Metal Pvt. Ltd. (1999) 237 ITR 165 (SC)].

3.2 The possibility of forming a different opinion from the one expressed in the order passed under section 254(1) cannot be treated as a ground for entertaining an application under section 254(2). [Popular Engg. Co. v ITAT (2001) 248 ITR 577 (P&H)].

3.3. Under section 154, the power to rectify the error must extend to the elimination of the error, even though the error may be such as to go to the root of order and its elimination may result in the whole order falling to the ground. [Blue Star Engineering Co. (Bombay) Pvt. Ltd. v CIT (1969) 73 ITR 283. ALSO.... CIT v S.S. Gupta (2002) 257 ITR 440 (Raj.)]

3.4 Absence of reasoning cannot be a mistake apparent from records as desiring any rectification under section 154: In estimating or assessing the taxable income and tax on it, it is not necessary to give reasons when the decision is in favour of the assessee. Therefore, absence of reasons cannot be a mistake apparent from the records. [Vijay Mallya v Asstt CIT (2003) 133 Taxman 552]

3.5 The Gujarat High Court in CIT v Subodhchandra S. Patel (2004) 138 Taxman 185 (Guj.) held that non-consideration of a judgment of the jurisdictional High Court or the Apex Court would always constitute a mistake apparent from record regardless of the judgment being rendered prior to or subsequent to the order proposed to be rectified.

3.6 Rectification of mistake is not permissible after issue of notice under section 143(2): - The Assessing Officer processed the return under section 143(1), accepting the loss from a partnership firm. Having noticed subsequently that such loss was not be allowed, he issued a notice of rectification to which the assessee submitted that he had no objection to the proposed rectification. A rectification order was also passed. In the meanwhile, however, the Assessing Officer also issued a notice under section 143(2). The High Court held that intimation under section 143(1) cannot be rectified after the issue of notice under section 143(2) for the reason that regular assessment proceeding had been since commenced. [CIT v Manjit Singh Sachdeva (2009) 310 ITR 357 (Kar.)]

4. INSTRUCTIONS

Instruction No.	Subject	Remarks
1/2016	Following the prescribed time-limit in passing order under sub-section (8) of section 154 of Income-tax Act, 1961. Suitable administrative action may be initiated by the supervisory officers where failure to adhere to the prescribed time frame is noticed.	Issued by CBDT under F.No. 225/305/2015-ITA.II dated 15/02/2016
2/2016	Passing rectification order under section 154 income-tax Act, 1961 in writing to be duly served upon the tax- payer concerned and not by merely making necessary rectification on the AST system.	Issued by CBDT under F.No. 225/305/2015-ITA.II dated 15/02/2016
3/2013	Procedure of be followed in receipt and disposal of rectification applications filed under section 154 of the Income-tax Act, 1961	Issued by CBDT under F.No. 225 /76/2013/ITA.II dated 05/07/2013

5. CIRCULARS

Sr.	Circular No.	SUBJECT
1	No. 68 dt. 17-11-1971	A mistake arising as a result of subsequent interpretation of law by the S.C. would constitute ' a mistake apparent from the records '. Therefore, where an assessee moves an application under section 154 pointing out that in the light of a later decision of the S.C. pronouncing the correct legal position, a mistake has occurred in any of the completed assessments in his case, the application shall be acted upon, provided the same has been filed within time and is otherwise in order.
2	No. 71 dt. 20-12-1971	Income-tax Officers are authorised to take action U/s.154, or to admit or dispose of on merits applications U/s.154 filed by assessee's seeking relief, for cancelling such protective assessments as have become redundant by waiving, if necessary, the time limit fixed U/s. 154(7).
3	No. 73 dt. 7-1-1972	In all the cases where a valid application under 154(2)(b) had been filed by the assessee within the statutory time limit but was not disposed of by the authority concerned within the time specified U/s. 154(7), it may be disposed of by that authority even after the expiry of the statutory time limit, on merits and in accordance with law.
4	No. 87 dt. 19-6-1972	Many a times, on the basis of which an order of penalty has been passed is itself either cancelled or annulled and yet the order of penalty survives. Where such a penalty order has not been made subject of appeal or where it has been confirmed on appeal by the AAC or on revision petition by the CIT /Addn. CIT, there will be justification for cancellation of the penalty order by the income-tax authority concerned U/s. 154 ITOs/AACs/IACs/Addl. CITs/CITs are authorised to take action U/s. 154 <i>suo motu</i> or to admit applications U/s. 154 filed by the assessee's seeking cancellation of penalty orders of the type mentioned above, waiving for this purpose, as may be necessary, the time limit prescribed U/s. 154(7)
5	No. 725 dt. 16-10-1995	Where notifications U/s. 10(23C) or section 35(1) are issued much after the completion of the assessments of the assessment years to which such notification apply, there is a mistake apparent from the record which can be rectified U/s. 154. However, while disposing of the rectification applications, the Assessing Officer must ensure that the conditions prescribed in the notifications are satisfied.

6	No. 581 dt. 28-9-1990	<p>Furnishing of evidence of payment of any sum by way of tax, duty, etc., along with the return is a necessary requirement for allowance of deduction of that sum U/s.43B. The sums disallowed as <i>prima facie</i> inadmissible U/s.143(1)(a), in the absence of requisite evidence of the payment, cannot be subsequently allowed U/s. 154.</p> <p>This is because the scope of the powers to make <i>prima facie</i> adjustments under section 143(1)(a) is somewhat coterminous with the power to rectify a mistake apparent from the record U/s. 154. Similarly, filing of evidence in support of an exemption/deduction at the time of furnishing the return of income has been prescribed as a necessary condition in certain other sections of the Income-tax Act, such as sections 32AB(5), 33AB(2), 54(2), 54B(2), 54D(2), 54F(4), 54G(2), 80HH(5), 80HHA(4), 35D(4),35E(6), 80HHB(3), 80HHC(4), 80HHD(6), 80-I(7), etc. In such cases, also where the exemption / deduction claimed is disallowed as <i>prima facie</i> inadmissible for want of evidence in support thereof under section 143(1)(a), it cannot be subsequently allowed by a 'rectification' order under section 154 if the assessee later on furnishes evidence in support thereof.</p>
7	No. 669 dt. 25-10-1993	<p>Where the sums referred to in the first proviso U/s. 43B had in fact been paid on or before the due dates mentioned therein, but the evidence therefor had been omitted to be furnished along with the return, the A.O.s can entertain applications U/s.154 for rectification of the intimations U/s. 143(1)(a) (as it stood at the relevant time) or orders U/s. 143(3), as the case may be, and decide the same on merits. <i>Circular No. 581, dated 28-9-1990 stands modified to the above extent.</i></p>
8	No. 4 dt. 20-6-2012	<p>In cases where CBDT has authorized the A. Os to make appropriate corrections in the figures of such disputed arrear demands after due verification/reconciliation and after examining the same on merits, whether by way of rectification or otherwise, irrespective of the fact that the period of limitation of four years as provided U/s. 154(7) of the Act has elapsed.</p>