RECTIFICATION OF MISTAKE

SECTION 154 OF INCOME TAX ACT 1961

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Rectification of mistake.

154. (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.**

Intimation vs order

Intimation means information of processing of Return of Income/ TDS statement/TCS statement filed by the Assessee, the deductor , the collector on the basis of information filed in Return/ statement on self assessment basis by Income tax Department without calling further documents, papers, evidences and information. Intimation is issued on processing of Return/ Statement. Intimation is result of processing of return/statement.

Order means decision of income Tax Authority in any proceeding or case under the Income Tax Act after calling & examining further information, papers, documents, books of accounts etc. order is passed as result of scrutiny, investigation & examination of a proceding.

Intimation vs deemed Intimation

Intimation means information of processing of Return of Income/ TDS statement/TCS statement filed by the Assessee, the deductor , the collector on the basis of information filed in Return/ statement on self assessment basis by Income tax Department without calling further documents, papers, evidences and information. The department is duty bound to intimate the Assessee when some Income has enhanced, refund has reduced, loss has reduced, demand has generated wheras when return/statement is processed by filed by Assessee as such with any change, then there is no need to send intimation, in such case when no intimation has been sent by department on processing of return/ statement, it is called deemed intimation.

Rectifiable orders/intimations

- An order passed under any of the provisions of Income Tax Act
- Intimation or deemed intimation i.e 143(3),144, 147, 148
- (a) 143(1) Processing of Income Tax Return

- (b) 200A Processing of TDS statement
- (c) 206CB Processing of TCS statement

WHO ARE INCOME TAX AUTHORITIES?

The **Income Tax Authorities** referred in **Section 116** are as follows:

1. The Central Board of Direct Taxes (CBDT)
2. The Principal Director Generals of Income Tax or Principal Chief Commissioners of Income Tax
3. The Director Generals of Income Tax or Chief Commissioners of Income Tax
4. The Principal Directors of Income Tax or Principal Commissioners of Income Tax
5. The Directors of Income Tax or Commissioners of Income Tax or Commissioners of Income Tax (Appeals)
6. The Additional Directors of Income Tax or Additional Commissioners of Income Tax or Additional Commissioners of Income Tax (Appeals)
7. The Joint Directors of Income Tax or Joint Commissioners of Income Tax
8. The Deputy Directors of Income Tax or Deputy Commissioners of Income Tax or Deputy Commissioners of Income Tax (Appeals)
9. The Assistant Directors of Income Tax or Assistant Commissioners of Income Tax
10. The Income Tax Officers
11. The Tax Recovery Officers
12. Inspectors of Income Tax

MISTAKE APPARENT FROM RECORD

Section 154 (1) of the Income Tax Act, 1961 provides that 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. Thus, the essential ingredients of section 154 (1) are as follows:

(i) The must be mistake.

(ii) The mistake must emanate from record.

(iii) The record must belongs to Income tax proceedings of Aseessee , not to other Assessee;

(iv) The mistake should be apparent from record.

Mistake

The dictionary meaning of the word 'mistake' is

-incorrect idea or opinion,

-thing incorrectly done or thought,

-error of judgement,

-misunderstand the meaning of.

This word has a special significance in the Income Tax Act because only those mistakes which are *apparent from record* could only be rectified. Thus, the mistake which can be rectified u/s 154 is not confined to clerical or arithmetical mistakes.

The Supreme Court in the case of ***T.S. Balaram, ITO v. Volcart Bros.,*** had held that a mistake apparent from the record must be an obvious and patent mistake. It should not be such which can be established by a long drawn process of reasoning on points in which there may be conceivably two opinions. That is, the mistake may be a mistake of fact or mistake of law but it must not involve a debatable point of law.

Further, where the mistake has to be determined on fresh investigation of facts, rectification will not be justified **[*Oil India Limited v. CIT*].**

In another case, the Kerala High Court held that rectification u/s 154 is possible where the mandatory provisions of the Income Tax Law have been overlooked by the taxing authorities.

Records

Record means :

piece of evidence or information constituting an account of something that has occurred or been said or state of being set down or preserved in writing etc.
The 'record' contemplated by section 154 does not mean only an order of assessment. It also comprises all the proceedings on which the assessment is made or the proceedings relating to appeals and the AO or any other authority is entitled for the purpose of exercising rectification jurisdiction to look into the whole evidence and the law applicable to ascertain whether there was an error.

The authority(s) rectifying mistake u/s 154 cannot go beyond the records and look into fresh evidence or material which has not been on record at the time when order sought to be rectified was passed.

The Apex court in the case of ***Atmala Nagraj*** held that the mistake should be discovered from the assessee's own record and not from the records of another assessee or a result of disposal of another case.

In ***CIT v. MRM Plantations Private Limited,*** the Madras High Court held that the records for the purposes of section 154 are those which are available to the authorities at the time of initiation of the proceedings for rectification and not merely the records of original proceedings sought to be rectified. In other words, the records should be those which are produced by the assessee at the time of passing the assessment order.

Apparent from Record

What is a mistake *apparent* from the record?

The dictionary meaning of word apparent is easily visible, obvious.

The **SC in *T.S. Balaram, ITO v. Volcart Bros.,*** held that a mistake apparent from the record must be an obvious and patent mistake. A decision on a debatable point of law is not a mistake apparent from the record. For example, if there is a question of construction on a point of law and two views are possible, section 154 cannot be resorted to. Further, where the liability to pay tax is already disputed, interest u/s 220 is not leviable in rectification.

The Supreme Court in case of ***CIT v. Kesri Metal Private Limited*** held that a look at the records must show that there has been an error and that error may be rectified. For example, u/s 199 credit for TDS has to be given for the assessment year in which the income subjected to TDS is assessable to tax. If the tax credit is sought to be given in the assessment of the year in which the TDS certificate is dated, then there would be no mistake apparent from record and the same cannot be rectified u/s 154.

A mistake can be regarded as apparent only when it is glaring, obvious or self evident and at the same time free from a question which is debatable. It is to be noted that if a debatable question has been settled by the Supreme Court in a given assessment year, it cannot be said that the question ceased to be debatable one with retrospective effect [*Jiyajeerao Cotton Mills Limited v. ITO*].

CBDT's Circular No. 68 dated 17.11.1971 requires a special mention here. As per this circular, a mistake arising as a result of subsequent interpretation of law by the Supreme Court.

Question :What type of errors can be rectified u/s 154 ?

The following errors can be taken care of by filing a rectification –

- an error of fact
- an arithmetic mistake
- a small clerical error
- an error due to overlooking compulsory provisions of law.

Here are some examples of these errors are –

- a mismatch in tax credit
- advance tax mismatch
- gender mentioned incorrectly
- additional details not submitted for capital gains at the time of filing return

Question : who can be empowered to rectify mistake ?

Any Income Tax Authority mentioned u/s 116 can rectify his own order

Commissioner of Income Tax (appeals) can rectify his order passed u/s 250(6)

Commissioner can rectify his own order passed u/s 263 & 264

Question : Can Income Tax Appellate Tribunal recitfy order u/s 154 ?

Answer : No, ITAT is not a income tax authority as defined u/s 116 of the act, hence ITAT is not empowered to rectify his order u/s 154, however ITAT can rectify his own order u/s 254(2)

Income-tax authorities.

116. There shall be the following classes of income-tax authorities for the purposes of this Act, namely :—

(*a*) the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963),

(*aa*) Principal Directors General of Income-tax or Principal Chief Commissioners of Income-tax,

(*b*) Directors-General of Income-tax or Chief Commissioners of Income-tax,

(*ba*) Principal Directors of Income-tax or Principal Commissioners of Income-tax,

(*c*) Directors of Income-tax or Commissioners of Income-tax or Commissioners of Income-tax (Appeals),

(*cc*) Additional Directors of Income-tax or Additional Commissioners of Income-tax or Additional Commissioners of Income-tax (Appeals),

(*cca*) Joint Directors of Income-tax or Joint Commissioners of Income-tax,

(*d*) Deputy Directors of Income-tax or Deputy Commissioners of Income-tax or Deputy Commissioners of Income-tax (Appeals),

(*e*) Assistant Directors of Income-tax or Assistant Commissioners of Income-tax,

(*f*) Income-tax Officers,

(*g*) Tax Recovery Officers,

(*h*) Inspectors of Income-tax.

Processing of statements of tax deducted at source.

200A. (1) Where a statement of tax deduction at source or a correction statement has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such statement shall be processed in the following manner, namely:—

(*a*) the sums deductible under this Chapter shall be computed after making the following adjustments, namely:—

(*i*) any arithmetical error in the statement; or

(*ii*) an incorrect claim, apparent from any information in the statement;

(*b*) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;

(*c*) the fee, if any, shall be computed in accordance with the provisions of section 234E;

(*d*) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of the amount computed under clause (*b*) and clause (*c*) against any amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee;

(*e*) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (*d*); and

(*f*) the amount of refund due to the deductor in pursuance of the determination under clause (*d*) shall be granted to the deductor:

Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.

Explanation.—For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

(*i*) of an item, which is inconsistent with another entry of the same or some other item in such statement;

(*ii*) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act.

(2) For the purposes of processing of statements under sub-section (1), the Board may make a scheme for centralised processing of statements of tax deducted at source to expeditiously determine the tax payable by, or the refund due to, the deductor as required under the said sub-section.

Processing of statements of tax collected at source.

206CB. (1) Where a statement of tax collection at source or a correction statement has been made by a person collecting any sum (herein referred to as collector) under section 206C, such statement shall be processed in the following manner, namely:—

(*a*) the sums collectible under this Chapter shall be computed after making the following adjustments, namely:—

(*i*) any arithmetical error in the statement;

(*ii*) an incorrect claim, apparent from any information in the statement;

(*b*) the interest, if any, shall be computed on the basis of the sums collectible as computed in the statement;

(*c*) the fee, if any, shall be computed in accordance with the provisions of section 234E;

(*d*) the sum payable by, or the amount of refund due to, the collector, shall be determined after adjustment of the amount computed under clause (*b*) and clause (*c*) against any amount paid under section 206C or section 234E and any amount paid otherwise by way of tax or interest or fee;

(*e*) an intimation shall be prepared or generated and sent to the collector specifying the sum determined to be payable by, or the amount of refund due to, him under clause (*d*); and

(*f*) the amount of refund due to the collector in pursuance of the determination under clause (*d*) shall be granted to the collector:

Provided that no intimation under this sub-section shall be sent after the expiry of the period of one year from the end of the financial year in which the statement is filed.

Explanation.—For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

(*i*) of an item, which is inconsistent with another entry of the same or some other item in such statement;

(*ii*) in respect of rate of collection of tax at source, where such rate is not in accordance with the provisions of this Act.

(2) The Board may make a scheme for centralised processing of statements of tax collected at source to expeditiously determine the tax payable by, or the refund due to, the collector, as required under sub-section (1).

143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

(*a*) the total income or loss shall be computed after making the following adjustments, namely:—

(*i*) any arithmetical error in the return;

(*ii*) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(*iii*) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(*iv*) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;

(*v*) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(*vi*) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:

[36][**Provided also** that no adjustment shall be made under sub-clause (*vi*) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018;]

(*b*) the tax, interest and fee, if any, shall be computed on the basis of the total income computed under clause (*a*);

(*c*) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax, interest and fee, if any, computed under clause (*b*) by any tax deducted at source, any tax collected at source, any advance tax paid, [37]**[***any relief allowable under section 89,***]** any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax, interest or fee;

(*d*) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (*c*); and

(*e*) the amount of refund due to the assessee in pursuance of the determination under clause (*c*) shall be granted to the assessee:

Provided that an intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax, interest or fee is payable by, or no refund is due to, him:

Provided further that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made.

(1A) 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.

Question : whether AO passing original order can rectify the order which has been considered and decided in appeal & revision ?

Answer : No, As per subsection 1A of section 154 of Income Tax Act1961, AO passing original order can not rectify the order which has been considered and decided in appeal & revision. The AO can rectify only those orders/ matters which are still not considered and decided in Appeal & Revision, But the AO has power to rectify those matters

-which are not contested in Appeal.

- contested but not considerd and decided in Appeal

- where Application for Revision has not been made.

- where Application for Revision has been made but application is not yet considered & decided.

Question : An order has been passed by AO for AY 2016-17 u/s 143(3) of Income Tax Act 1961 making following additions.

1	Disallowance of Expenses	Contested before CIT(Appeals) & Appeal Considered & decided in favour of Revenue
2	Mismatch of Tax credit	Application has been made to concerned AO for rectification of mistake u/s 154 but AO has not yet taken any action.
3	Disallowance on account of non deduction of TDS	Application has been made to commissioner for revision u/s 264 but revision application is yet to be decided

Now the Assessee wants to make a fresh application u/s 154 of income Tax Act -1961 in respect of all the three disallowances. Can he do so ?

Answer :

1	Disallowance of Expenses	Contested before CIT(Appeals) & Appeal Considered & decided in favour of Revenue	Since the Appeal has considered & decided in favor of Revenue , The AO has no power to entertain such rectification applications which has already considered & decided by CIT (A). please refer to section 154(1A) of Income Tax Act,1961. However The Assessee can make rectification application commissioner of Income Tax (Appeals) if such mistake is appearent from records.
2	Mismatch of Tax credit	Application has been made to concerned AO for rectification of mistake u/s 154 but AO has not yet taken any action.	Yes, Assessee can make fresh application or reminder letter in respect earlier rectification application.
3	Disallowance on account of non deduction of TDS	Application has been made to commissioner for revision u/s 264 but revision application is yet to be decided	Yes, Assessee can make application for rectification of mistake to AO since revision application has not yet considered & decided.

(2) 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 **by the deductor or by the collector**, and where **the authority concerned is the Commissioner (Appeals), by the Assessing Officer also.**

Question : Whether Income Tax Authority can rectify an order /intimation on its own motion ?

Answer : Yes, Income Tax Authority can do so on its own motion.

{ Refer 154(2)(a) of Income Tax Act -1961}

Question : Who can make application for rectification of mistake u/s 154 of Income Tax Act-1961 to authority concerned ?

Answer :

1) Assessee
2) Deductor
3) Collector
4) Assessing officer, if the authority concerned is CIT(A)

{ Refer 154(2)(a) of Income Tax Act -1961}

Question : Is any form prescribed for making application u/s 154 of Income Tax Act-1961?

Answer : No, There is no form prescribed under Income tax rules for rectification application u/s 154 of Income Tax Act-1961.

Question : How the Assessee/Deductor/ Collector can brought mistake to the notice of Authority concerned ?

Answer : The Assessee/ Deductor/ collector can write a application to concerned authority clearly stating the fact that there is mistake appearnt from record in order passed by the Concerned authority for which relief under section 154 of Income Tax Act-1961 is sought.

However, now all the filings of income Tax are online now, you can make a online request for rectification of mistake u/s 154 of Income Tax Act -1961 on income tax portal , if mistake arises from order relating of return of income and on traces portal if mistake arises from intimation received under 200A/206CB in respect of TDS/TCS Statement.

Question : Can Application for rectification of mistake be made by chartered Accountant/ Advocate/ Authorized Representative on behalf of his client ?

Answer : No, the rectification application has to be filed by Assessee/ Deductor/collector only his signature only. The concerned authority is not duty bound to accept the rectification application if it is signed by chartered Accountant/ Advocate/ Authorized Representative on behalf of his client.

(3) An amendment, which has the effect of

- enhancing an assessment –

reducing a refund –

otherwise increasing the liability

of the assessee or the deductor or the collector, **shall not be made** under this section **unless the authority concerned has given notice** to the assessee or the deductor or the collector of its intention so to do and **has allowed the assessee or the deductor or the collector a reasonable opportunity of being heard.**

Question : Can a authority concerned make a amendment which has the effect of enhancing an assessment, reducing a refund, otherwise increasing the liability without giving proper notice to the assessee or the deductor or the collector ?

Answer: As per subsection 3 of section 154 of Income Tax Act 1961, No Income Tax Authority shall make an amendment for rectification of mistake which has effect of enhancing an assessment , reducing a refund , otherwise increasing the liability of the assessee or the deductor or the collector unless the authority concerned has given notice to the assessee or the deductor or the collector of its intention so to do and has allowed the assessee or the deductor or the collector a reasonable opportunity of being heard.

Hence where income is to increased or loss to be decreased, refund claimed is to be reduced or tax liability is to be increased with the intention of concerned income tax authority of making amendment for rectification of mistake , the concerned Income Tax authority will issue a SCN(show cause notice) to the Assessee/ deductor/ collector clearly stating that what amendment he proposes to made and how it effects the assessment order already has been made & give a proper opportunity to Assessee/ deductor/ collector of being heard. If the concerned income tax Authority passed such an order, it is not be treated as valid order.

(4) Where an amendment is made under this section, **an order shall be passed in writing by the income-tax authority concerned.**

Question : How the rectification order is to be made ?

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

Question : whether alteration in orginal order is to be made in respect of rectification u/s 154 of Income Tax Act-1961 or fresh order is to be passed?

Answer : A fresh Assesment order is to be passed for making rectification of mistake u/s 154 of the Income Tax Act-1961, just alteration to original order will not suffice .

Question : Whether rectification order u/s 154 is Appealable ?

Answer : Yes, order passed under this section is Appealable.

(5) Where any such amendment has the **effect of reducing the assessment or otherwise 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 or the deductor or the collector.

Question : whether refund can be allowed on basis of rectification order u/s 154?

Answer : Yes, As per subsection 5 of section 154 of Income Tax Act, 1961,refund will be allowed to the assessee or the deductor or the collector Where any such amendment has the effect of reducing the assessment or otherwise reducing the liability of the assessee or the deductor or the collector.

(6) Where any such amendment has the effect of enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee or the deductor or the collector, the Assessing Officer shall serve on the assessee or the deductor or the collector, as the case may be **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.**

Question : when a notice of demand is required to be issued in case of amendment is carried out under section 154 of Income Tax Act 1961?

Answer : As per subsection 6 of section 154 of Income Tax Act-1961, A notice of demand in prescribed form (Form No.7 as per Rule 15 of Income Tax Rules) determining the amount payable is required to be issued and served on Asessee/ deductor/ collector in case of amendment is carried out under section 154 of Income Tax Act 1961Where any such amendment has the effect of enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee or the deductor or the collector.

(7) 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.**

Question : A assessment has completed u/s 143(3) on 25-11-2015. The Assessee has made an application for rectification of mistake u/s 154 on 15-12-2015 to concerned Authority. The Concerned Authority has passed rectification order rejecting the application on 07-04-2020. Whether the rectification order passed is valid?

Answer : As per subsection 7 of section 154 of income Tax Act-1961 ,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. Hence the above situation given , the concerned authority can pass the amendment order up to 31-03-2020 i.e four years from the end of the financial year in which the order sought to be amended was passed. But the order has been passed on 07-04-2020 after the expiry of four year. Hence this order is not valid.

(8) Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made by the assessee or by the deductor or by the collector 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.

Question : A assessment has completed u/s 143(3) on 25-11-2015. The Assessee has made an application for rectification of mistake u/s 154 on 15-12-2018 to concerned Authority. The Concerned Authority has passed rectification order rejecting the application on 15-06-2019. Whether the rectification order passed is valid?

Answer : As per subsection 8 of section 154 of income Tax Act-1961, where an application for amendment under this section is made by the assessee or by the deductor or by the collector 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.

Hence the above situation given , the concerned authority can pass the amendment order up to 30-06-2019 i.e **within a period of six months from the end of the month in which the application is received by it**. But the order has been passed on 15-06-2019 which is with in the time period prescribed under subsection 8 of section 154 of income Tax act-1961 . Hence this order is valid.

Question : What do you mean by order sought to be amended ?

Answer : Order sought to be amended does not necessarily mean the original order. It could be any order including the amended or rectified order.

Question : Whether fresh time limit is available for filing rectification application on passing of rectified order?

Answer : Yes, The Applicant will get fresh time limit of four years shall be from the end of the financial year in which the rectification order was passed.[Hind Wire Industries Ltd. V CIT (1995) 212 ITR 639 (SC)]

Question : whether time limit of four year from the end of the financial year also applicable to intimation u/s 143(1),200A, 206CB ?

Answer : 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 u/s u/s 143(1),200A, 206CB.

Question : Whether subsequent decision of court justify the decision of rectification ?

Answer : 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).]**

Question : whether Assessee can file Appeal or Revision against the order of rectification passed by Assessing officer ?

Answer : 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.

Question : The assessment order was passed on 21-10-2013. The assessee made an application 15-11-2015 for rectification under section 154 pointing out that depreciation has not been allowed on certain assets. The rectification order was passed on 18-2-2016. The assessee made another application under section 154 on 15-05-2018 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 21-10-2013 was passed. Whether the action of Assessing officer is justified ?

Answer : 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 18-02-2016 was passed i.e. up to 31-03-2020. Hence, the action of the Assessing Officer was not justified.

However, had the assessee in its application dated 15-05-2018 asked for rectification on an issue which was not covered by the rectification order dated 18-02-2016 but arose from original order dated 21-10-2013, 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 21-10-2013 was passed.

JUDICIAL DECISIONS

1) Debatable point of law is not a mistake apparent from the record

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.

{T. S. Balaram, ITO v Volkart Bros (1971) 82 ITR 40 (SC)}

2)Reference to documents outside the records is not premissable

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) forming a different opinion from the one expressed in the order passed

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)].

4)Rectification must eliminate complete error while passing order u/s 154

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 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.)]

5)Absense of reasoning can not be a mistake apparent from records

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]

6) Non-consideration of a judgment of the jurisdictional High Court or the Apex Court

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.

{CIT v Subodhchandra S. Patel (2004) 138 Taxman 185 (Guj.)}

7) 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) 310ITR 357 (Kar.)]

Important circulars issued by CBDT on section 154

Sr. No	Circular No	Subject
1	68/17-11-1971	*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. This circular contrary to judgement of Apex court in **{T. S. Balaram, ITO v Volkart Bros (1971) 82 ITR 40 (SC)}**
2	71/20-12-1971	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	73/07-01-1972	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 suo motu or to admit applications U/s. 154 filed by the assessees 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	725/16-10-1995	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	581/28-09-1990	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 prima facie inadmissible U/s.143(1)(a), in the absence of requisite evidence of the payment, cannot be subsequently allowed U/s. 154. This is because the scope of the powers to make prima facie 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 Incometax 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 prima facie 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.
7	669/25-10-1993	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. Circular No. 581, dated 28-9-1990 stands modified to the above extent.
8	4/20-06-2012	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.

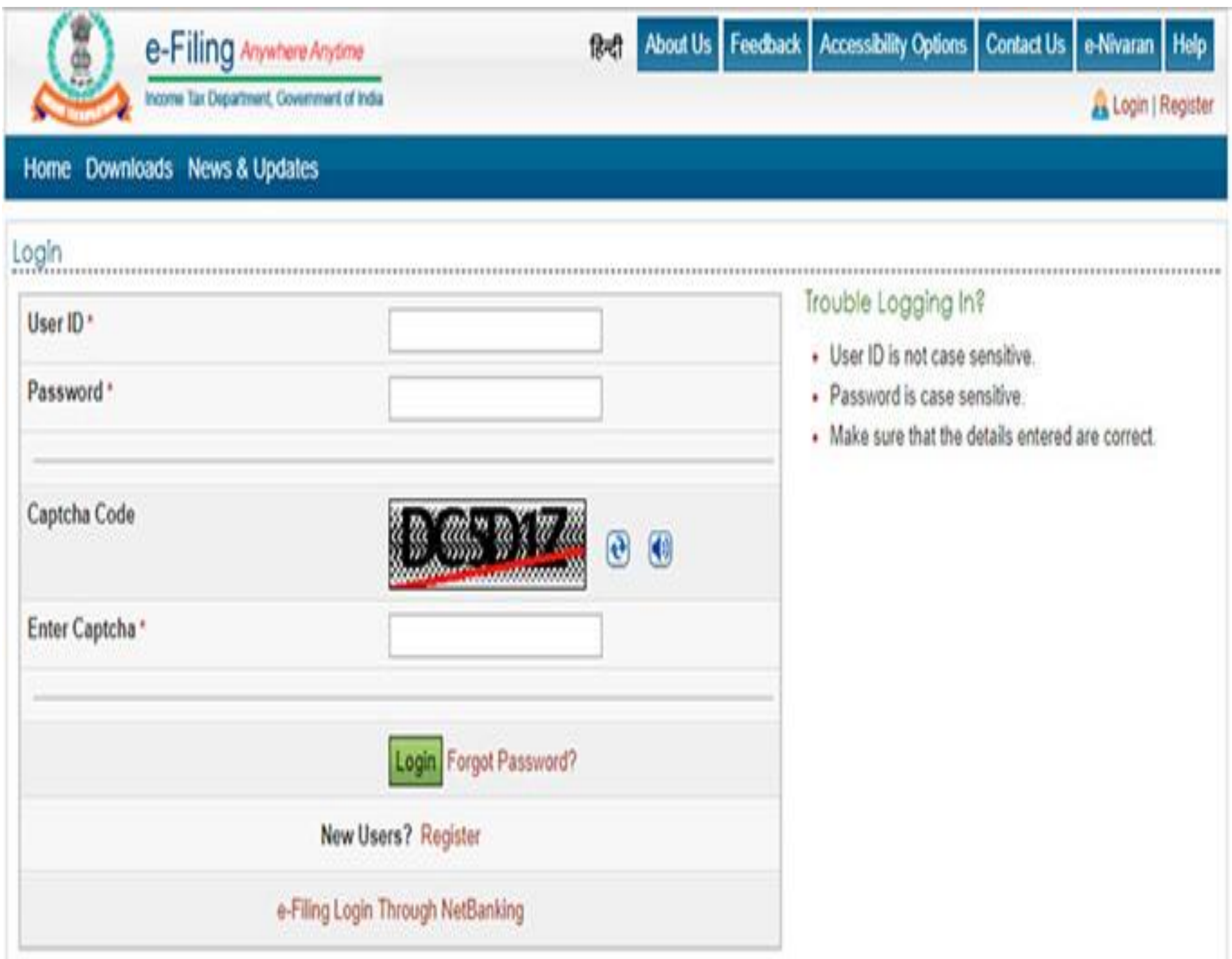
Pre-Requisites to file online Rectification Request U/s. 154

1	To file your online Rectification, you should be a registered user in e-Filing application.
2	The Income Tax Return for the Assessment Year should have been processed in CPC, Bangalore. Only processed returns are eligible for online rectification. To file on line correction , You will check the status of e return filed first by logging in to your e filing Portal.
3	An Intimation under Section 143(1) OR an order under Section 154 passed by CPC, Bangalore for the e-Filed Income Tax return should be available with the taxpayer.it is also called CPC communication Reference Number. If it not available, You will raise a request for the same.
4	For Electronic returns filed and processed at CPC, only online rectifications will be considered and allowed.
5	If the refund arising out of return processed at CPC is adjusted against the demand of other Assessment Years and then the assessee is challenging the demand itself, in that case i) Rectification application has to be filed for the demand year, if the demand was raised by CPC then online application has to be filed ii) for the demand raised by the Field Assessing Officer, the application has to be filed before him.
6	No rectification has to be filed for giving credit to taxes paid after raising the demand.if the demand has been paid, then there is no need to make rectification, it will be auto populated

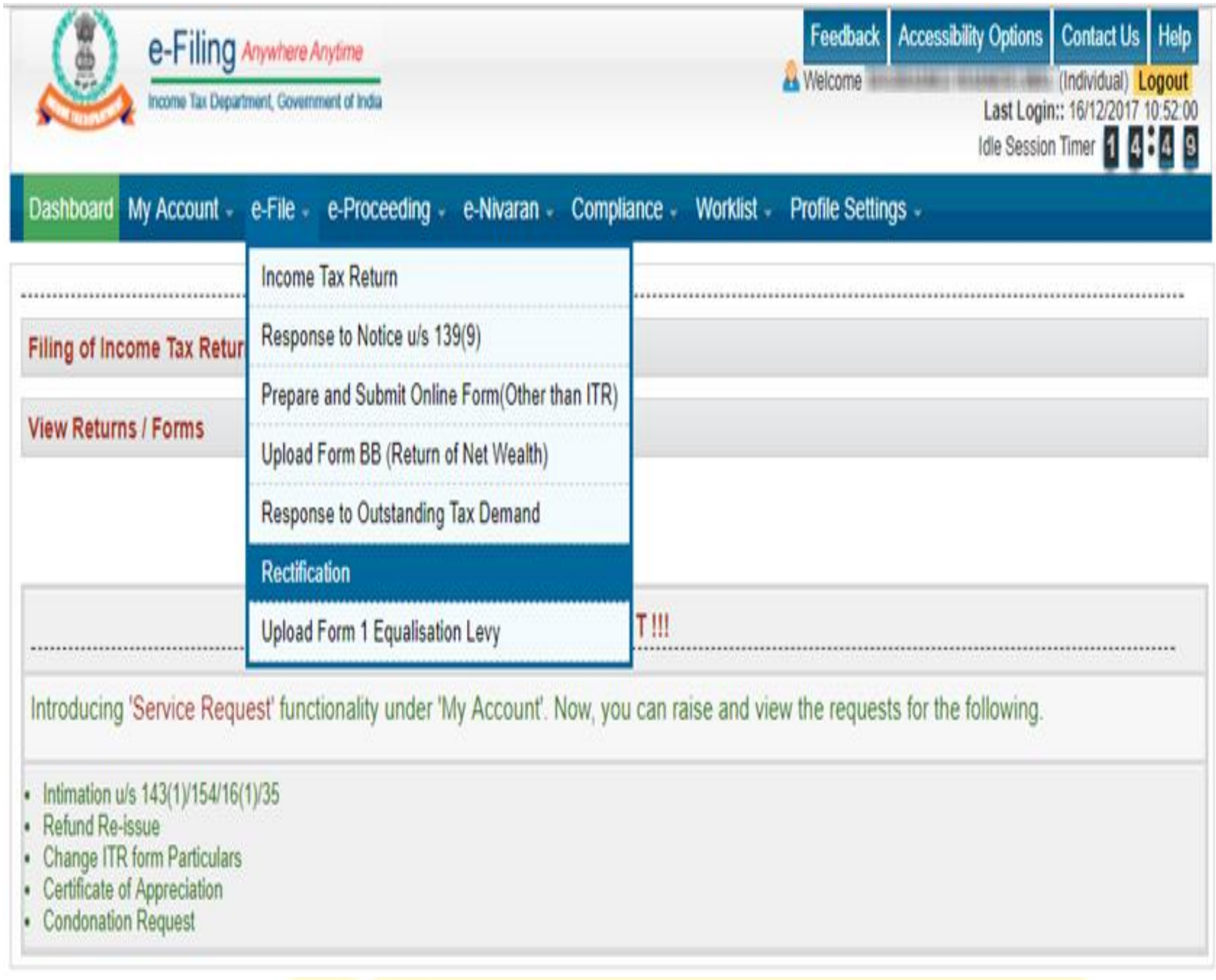
Process of making the online rectification under section 154

You can easily raise an online request for rectification by following the simple steps as mentioned below :

- 1. Login to www.incometaxindiaefiling.gov.in
-



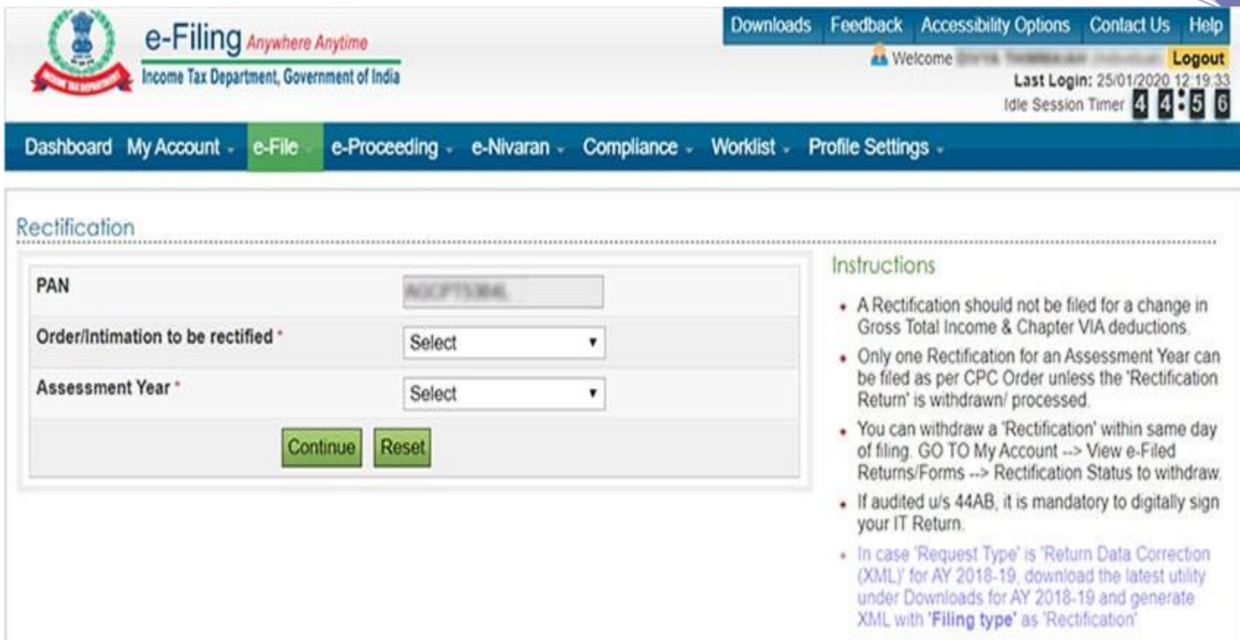
- 2. From the drop down “Efile” select “Rectification”
-



3. Mention the credentials

Assessment Year

Order or intimation to be rectified - Select between Income Tax or Wealth Tax from the drop down menu

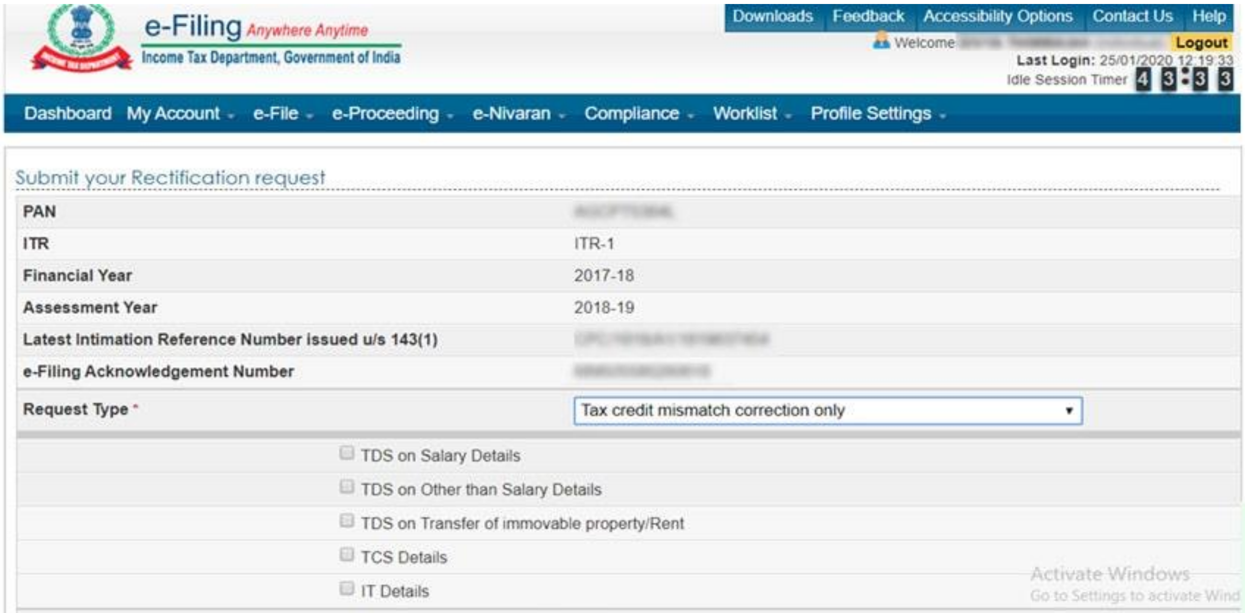


- D. Select the rectification request type

  There are four types of request from which you can choose

  1. **Tax Credit mismatch correction only**

     By selecting this option you can make multiple corrections (Maximum of 10 sub categories at a time) in Income Tax amount, TDS (Tax Deduction at source) amount and TCS (Tax Collection at source) amount you specified in Income Tax Return.



e-Filing Anywhere Anytime
Income Tax Department, Government of India

Downloads | Feedback | Accessibility Options | Contact Us | Help

Welcome [illegible] Logout
Last Login: 25/01/2020 12:19:33
Idle Session Timer 4 3:3 3

Dashboard | My Account | e-File | e-Proceeding | e-Nivaran | Compliance | Worklist | Profile Settings

Submit your Rectification request

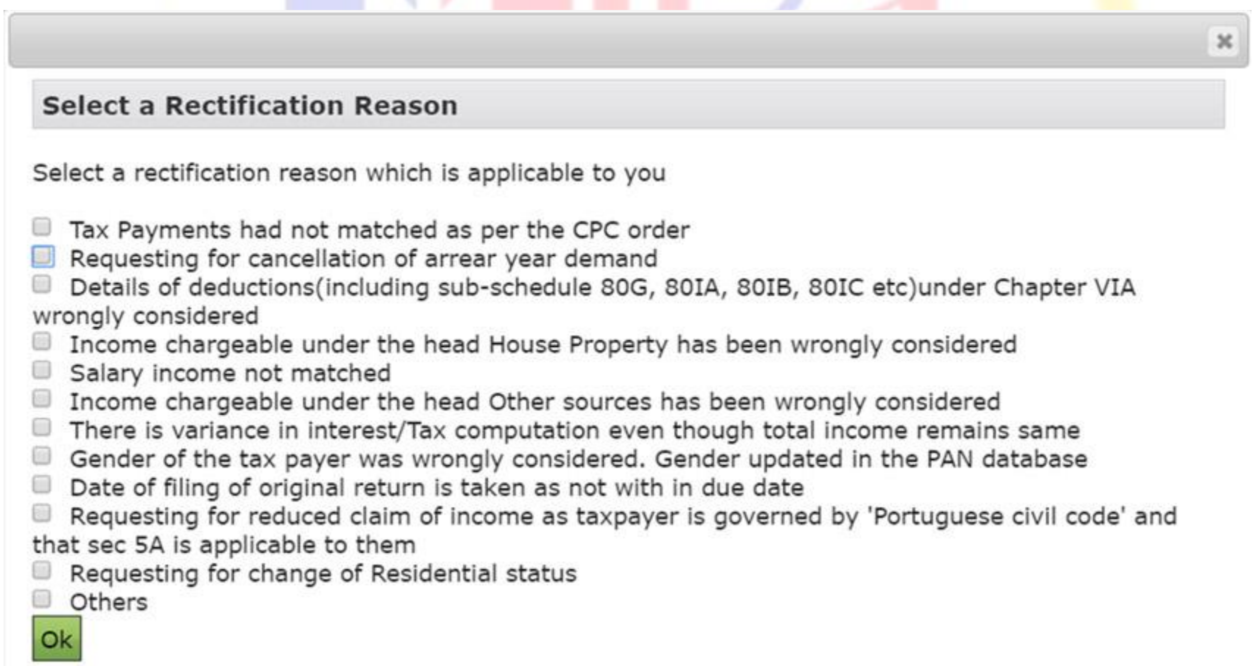
PAN	[illegible]
ITR	ITR-1
Financial Year	2017-18
Assessment Year	2018-19
Latest Intimation Reference Number issued u/s 143(1)	[illegible]
e-Filing Acknowledgement Number	[illegible]
Request Type *	Tax credit mismatch correction only

- TDS on Salary Details
- TDS on Other than Salary Details
- TDS on Transfer of immovable property/Rent
- TCS Details
- IT Details

Activate Windows
Go to Settings to activate Wind

2. **Return data Correction (XML)**

Choose reasons(max. 4 can be selected and schedules for which you are requesting rectification.You need to upload xml for the changes



Select a Rectification Reason

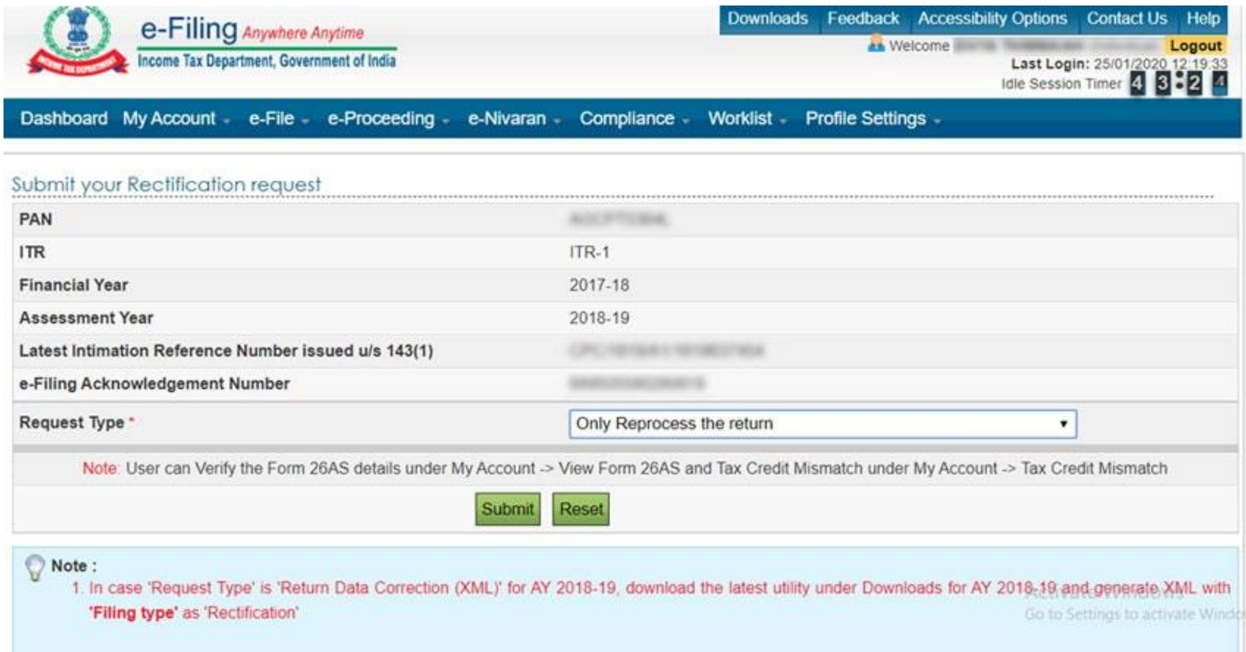
Select a rectification reason which is applicable to you

- Tax Payments had not matched as per the CPC order
- Requesting for cancellation of arrear year demand
- Details of deductions(including sub-schedule 80G, 80IA, 80IB, 80IC etc)under Chapter VIA wrongly considered
- Income chargeable under the head House Property has been wrongly considered
- Salary income not matched
- Income chargeable under the head Other sources has been wrongly considered
- There is variance in interest/Tax computation even though total income remains same
- Gender of the tax payer was wrongly considered. Gender updated in the PAN database
- Date of filing of original return is taken as not with in due date
- Requesting for reduced claim of income as taxpayer is governed by 'Portuguese civil code' and that sec 5A is applicable to them
- Requesting for change of Residential status
- Others

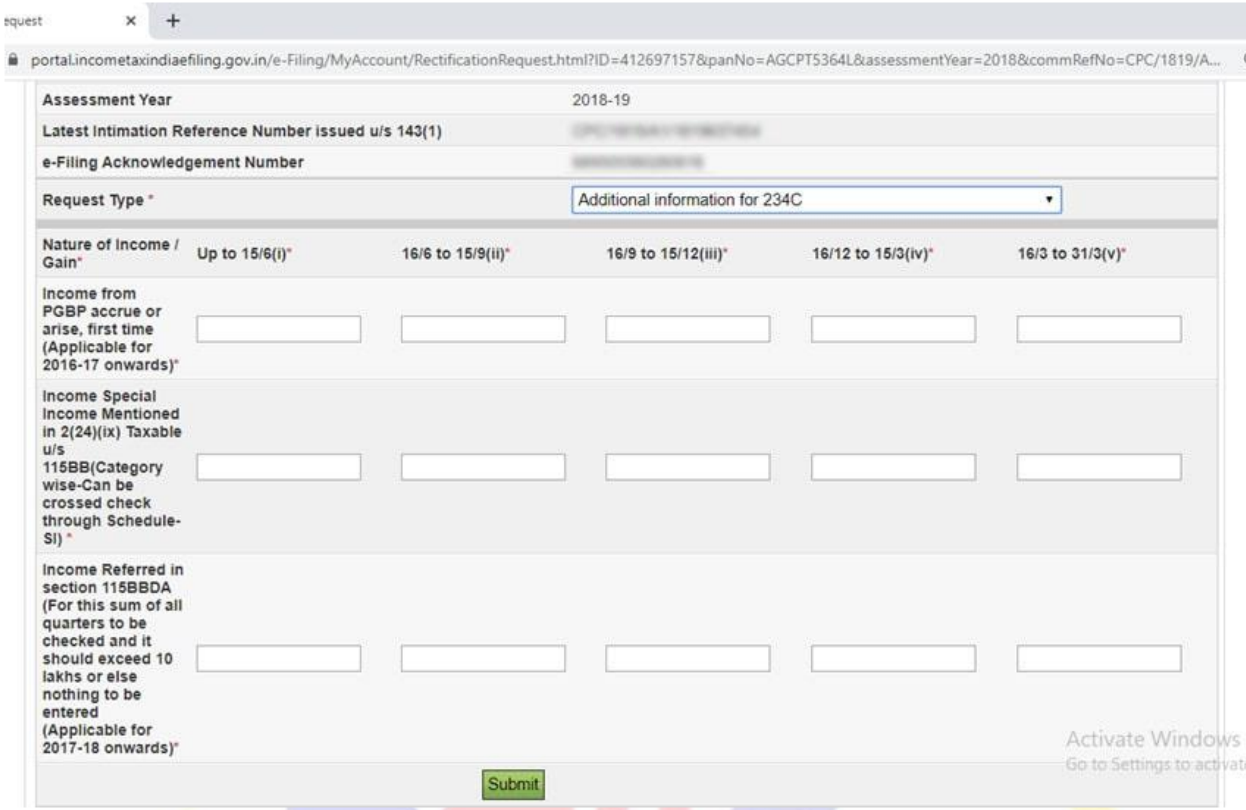
Ok

3. **Only Reprocess the return**

Through choosing this option you can request to reconsider the areas of Tax credit mismatch or 26AS details. No xml to be uploaded in this case.



4. **Additional Information for 234C**



- E. Click on submit below the screen. Next select OK on pop up asking for confirmation that your TDS entries are in sync with 26AS
- F. A reference number is generated followed by successful submission of request.

Generation of reference number ensures successful submission of your rectification request with the IT Authorities. Order under section 154 will be received by you after the request is processed successfully.To conclude, the Rectification of income tax return gives you and the income tax officer the same right to make corrections in return. You cannot seek corrections after 4 years from the end of the financial year (from passing of order sought to be rectified).

DRAFT APPLICATION FOR RECTIFICATION U/S 154

Dated :

To

The Assessing Officer/Income Tax Officer/CIT/or any Other Competent Authority

Ward_____

Dear Sir,

Subject: Application for rectification of mistake under section 154(2) of Income Tax Act-1961

Regarding : Name ________

Assessment year_____

PAN :___________

While acknowledging receipt of the assessment order and demand notice for assessment year _______________ I find on checking that the said order contains the following mistakes:

1. ____________________

2. ____________________

3. ____________________

All the aforementioned mistakes are apparent from the record and may please be rectified under section 154 of the Income-tax Act, 1961. Till such time as the rectification is made and the demand revised, I may not be treated as an assessee in default in respect of the tax presently demanded for assessment year ______. .

Yours faithfully

(Assessee/ Deductor / Collector)

SECTION 154 | *RECTIFICATION OF MISTAKES*

Circular No.68/17-11-1971

Mistakes apparent from records - Whether can be treated as such on the basis of subsequent decision of Supreme Court

1. The Board are advised that a mistake arising as a result of a subsequent interpretation of law by the Supreme Court would constitute "a mistake apparent from the records" and rectificatory action under section 35/154 of the 1922 Act/the 1961 Act would be in order. It has, therefore, been decided that *where an assessee moves an application under section 154* pointing out that in the light of a later decision of the Supreme Court 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. Where any such applications have already been rejected and the assessee files fresh applications within the statutory time limit, the same may also be treated on par with the applications which may either be pending or received after the issue of this circular.

2. The Board desire that any appeals or references pending on the point at issue may please be withdrawn.

Circular : ***No. 68 [F.No. 245/17/71-A&PAC], dated 17-11-1971.***

JUDICIAL ANALYSIS

EXPLAINED IN - In *ITO* v. *Smt. Manini Niranjanbhai* [1992] 41 ITD 324 (Ahd.-Trib.) (SMC) it was observed that as per Circular No. 68, dated 17-11-1971, it is now a well established position that the Supreme Court does not declare the law with effect from the date of its order and the law declared by the Supreme Court has effect not only from the date of the decision but from the inception of the statutory provision. It has been mentioned therein that the Board have been advised that the mistake arising as a result of subsequent interpretation of law by the Supreme Court would constitute a mistake apparent from record and rectificatory action under section 154 would be justified.

Circular : ***No. 73 [F.No. 245/13/71-A & PAC], dated 7-1-1972.***

Board's authorisation for taking action under section 154 beyond time limit specified under section 154(7) in cases where valid application has been field under section 154(2)(b) but was not disposed of within the said time limit - Order under section 119(2)(a)

In exercise of the powers conferred by clause (*a*) of sub-section (2) of section 119, the Central Board of Direct Taxes hereby orders that in all the cases where a valid application under clause (*b*) of sub-section (2) of section 154 had been filed by the assessee within the statutory time limit but was not disposed of by the authority concerned with in the time specified under sub-section (7) of section 154, it may be disposed of by that authority even after the expiry of the statutory time limit, on merits and in accordance with law.

Circular : *No. 73 [F.No. 245/13/71-A & PAC], dated 7-1-1972.*

Board's authorisation for taking action under section 154 beyond time limit specified under section 154(7) in cases of protective assessments requiring to be cancelled - Order under section 119(2)(b)

A copy of the order dated 20-12-1971 passed by the Board on the subject is enclosed for information and guidance.

Circular : *No. 71 [F.No. 246/25/71-A & PAC], dated 20-12-1971.*

ANNEX - ORDER REFERRED TO IN CLARIFICATION

1. Where the same income was assessed, as a protective measure, in the hands or more than one assessee or as the income of more than one assessment year, and one or more of these protective assessments needs to be cancelled as a result of some of the relevant assessments having become final and conclusive, it has been the practice of the Income-tax Department to cancel the redundant assessments under section 154, treating these as involving mistakes apparent from the records. This is being done by the Income-tax Officers either *suo motu* or on applications made by assessees. Sometimes, it is not possible to take action under section 154 in such cases because of the operation of the time limit laid down in sub-section (7) of section 154. Since the operation of this time limit causes genuine hardship to the affected assessees, the Central Board of Direct Taxes, in exercise of the powers vested in them under clause (*b*) of sub-section (2) of section 119, hereby authorises the Income-tax Officer to take action under section 154, or to admit or dispose of on merits applications under section 154 filed by assessees seeking relief, for cancelling such protective assessments as have become redundant by waiving, if necessary, the time limit fixed under sub-section (7) of section 154.

2. Every case of the relaxation of the time limit on the authority of this order shall be reported by the Income-tax Officer to the Inspecting Assistant Commissioner, in whose jurisdiction he is functioning within one month of the passing of such order.

JUDICIAL ANALYSIS

EXPLAINED IN **- The above circular was referred to in *Kirtikumar Vinodray, Sanjay Kumar Vinodrai and Sandip Ashwinkumar Trust* v. *ITO* 1995 Tax LR 186 (ITAT-Ahd.), with the following observations:**

". . . Once we hold that the entire income should be assessed in the hands of the trustees in their representative capacity under section 161(1A), it is simultaneously necessary to also direct the Assessing Officer to delete the share income from the trust in the hands of the respective beneficiaries as otherwise it would result in levy of tax twice on the same income, which is not permissible under the aforesaid provisions and which is clearly invalid in view of the various decisions referred to herein before. Such a finding is, therefore, a necessary finding for a proper disposal of the present appeal before us. We have, therefore, directed the ITO to rectify the assessments in the case of all the three beneficiaries by passing appropriate orders. We would also like to make it clear that once the entire income has been held to be taxable in the hands of the trustees in their respective capacity under section 161(1A), the inclusion of the same income in the hands of the respective beneficiaries in their respective returns and its acceptance under section 143(1) would only be in the nature of a protective inclusion in the hands of the beneficiaries which deserves to be deleted and cancelled under section 154 regardless of the fact that a period of more than 4 years have already passed. Such deletion of the share income from the trust in the hands of the beneficiaries will also be in consonance with Circular No. 71, dated 20-12-1971 issued by the Board under section 119 read with section 154 of the Income-tax Act, 1961. The ITO is, therefore, directed to grant necessary relief in the assessments of all the three beneficiaries as indicated above." (p. 191)

SECTION 119 OF THE INCOME-TAX ACT, 1961 - INCOME-TAX AUTHORITIES - INSTRUCTIONS TO SUBORDINATE AUTHORITIES - AUTHORIZATION OF AOs IN CERTAIN CASES TO RECTIFY/RECONCILE DISPUTED ARREAR DEMAND

CIRCULAR NO. 4 OF 2012, DATED 20-6-2012

The Board has been apprised that in certain cases the assessees have disputed the figures of arrear demands shown as outstanding against them in the records of the Assessing Officer. The Assessing Officers have expressed their inability to correct/reconcile such disputed arrear demand on the ground that the period of limitation of four years as provided under sub-section (7) of section 154 of the Act has expired.

Further, in some cases, the Assessing Officers have uploaded such disputed arrear demand on the Financial Accounting System (FAS) portal of Centralized Processing Center (CPC), Bengaluru which has resulted in adjustment of refund arising out of processing of Returns against such arrear demand which has been disputed by such assessees on the grounds that either such demand has already been paid or has been reduced/ eliminated in the appeals, etc. The arrear demands, in these cases also were not corrected / reconciled for the reason that the period of limitation of four years has elapsed.

2. The Board, in consideration of genuine hardship faced by the abovementioned class of cases, in exercise of powers vested under section 119(2)(*b*) of the Act, hereby authorize the Assessing Officers 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 under section 154(7) of the Act has elapsed.

3. In view of the above the following has been decided:—

(*a*) In the category of cases where based on the figure of arrear demand uploaded by the Assessing Officer but disputed by the assessee, the Centralized Processing Center (CPC), Bengaluru has already adjusted any refund arising out of processing of return, the jurisdictional Assessing Officer shall verify the claim of the assessee on merits. After due verification of any such claim on merits, the Assessing Officer shall issue refund of the excess amount, if any, so adjusted by CPC due to inaccurate figures of arrear demand uploaded by the Assessing Officer. The Assessing Officer, in appropriate cases, will also upload amended figure of arrear demand on the Financial Accounting System (FAS) portal of Centralized Processing Center (CPC), Bengaluru wherever there is balance outstanding arrear demand still remaining after aforesaid correction/ reconciliation.

(*b*) In other cases, where the assessee disputes and requests for correction of the figures of arrear demand, whether uploaded on CPC or not uploaded and still lying in the records of the Assessing Officer, the jurisdictional Assessing Officer shall verify the claim of the assessee on merits and after due verification of such claim, will make suitable correction in the figure of arrear demand in his records and upload the correct figure of arrear demand on CPC portal.

4. It is specifically clarified that these instructions would apply only to the cases where the figures of arrear demand is to be reconciled/ corrected - whether such arrear demand has been uploaded by the Assessing Officer on to Financial Accounting System (FAS) of CPC or it is still in the records of the Assessing Officer.

This may be brought to the notice of all the officers of your CCA region.