
(1983) 08 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 534 of 1973

Abhinendra Kumar and Others

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 26-08-1983

Acts Referred:

Income Tax Act, 1961 — Section 154, 33

Citation : (1983) 37 CTR 59 : (1984) 150 ITR 189 : (1984) 16 TAXMAN 392

Hon'ble Judges : G.P. Singh, C.J.; Faizanuddin, J

Bench : Division Bench

Advocate : B.L. Nema, for the Appellant; B.K. Rawat, for the Respondent

Judgement

Singh, C.J.—The question of law referred to in this case is as follows :

"Whether, on the facts and in the circumstances of the case, the development rebate of Rs. 2,000 allowed in the original assessment can be legally withdrawn by the Income Tax Officer by invoking the provisions of Section 154 of the Income Tax Act, 1961 ?"

The reference relates to the assessment year 1967-68. In the assessment, the assessee was allowed development rebate of Rs. 2,000 u/s 33 of the I.T. Act, 1961. In rectification proceedings u/s 154, the ITO withdrew this rebate on the ground that the machinery was let out by the assessee and was not used for his business. The AAC held that the proceedings u/s 154 could not be taken by the ITO. In further appeal, however, the Tribunal upheld the view taken by the ITO. When the reference first came up for hearing before us, we directed the Tribunal to submit a supplementary statement elucidating: (1) whether there was any material on the record of the assessment case for the year 1967-68 that the machinery was let out by the assessee and not used for his business; and (2) whether, if it was let out, the rental income was taxed as business income or as income from other sources. The supplementary statement, which has now been received, does not indicate that there was any material on the record of the

assessment case for the year 1967-68 to show that the machinery was let out by the assessee and was not used for his business. It appears that in the return filed for the year 1968-69, the assessee showed that the machinery was let out for business. It was then that the ITO started proceedings for rectification. When there was nothing on the record of the Income Tax case for the assessment year 1967-68 to show that the machinery was not used by the assessee for his business and was let out, no proceedings could be taken u/s 154 for rectification. Under this section, the ITO can only rectify a mistake which is apparent from the record. As the mistake, if any, could not be said to be apparent from the record, the ITO had no jurisdiction to rectify the assessment and withdraw the rebate.

2. For the reasons given above, we answer the question referred as follows :

"The Income Tax Officer was not right in withdrawing the development rebate of Rs. 2,000 allowed in the original assessment by invoking the provisions of Section 154 of the Act."

3. There will be no order as to costs of this reference.