
(1976) 08 AP CK 0018

In the Andhra Pradesh High Court

Case No : Case Referred No. 18 of 1975

Additional Commissioner of Income Tax

APPELLANT

Vs

P.R.N.S. and Co.

RESPONDENT

Date of Decision : 20-08-1976

Acts Referred:

Income Tax Act, 1961 — Section 139, 139(2), 139(4), 142(1), 143(1)

Citation : (1977) 109 ITR 574

Hon'ble Judges : B.J. Divan, C.J.;Raghuvir, J

Bench : Division Bench

Advocate : P. Rama Rao, for the Appellant; J.V. Srinivasa Rao and M.J. Swamy, for the Respondent

Judgement

B.J. Divan, C.J.—In this case at the instance of the revenue the following question has been referred to us for our opinion :

"Whether, on the facts and in the circumstances of the case, the interest charged u/s 139 for the assessment years 1962-63, 1963-64 and 1964-65 is liable to be cancelled u/s 154 of the Income Tax Act, 1961?"

2. The facts giving rise to this reference are as follows : We are concerned with assessment years 1962-63, 1963-64 and 1964-65. The assessee is a registered partnership firm carrying on business of transport. For the assessment years 1962-63, 1963-64 and 1964-65 it had to file its returns of income u/s 139(2) on or before November 15, 1962, September 30, 1963, and September 30, 1964, respectively as its previous year ended with the financial year in the three years of assessment. Notices u/s 139(2) were also served on 24th August, 1962, 27th August, 1963, and 18th July, 1964, for the three assessment years, respectively. However, the return of income was filed on March 23, 1963, in respect of the assessment year 1962-63. The Income Tax Officer completed the assessments for the assessment years 1962-63, 1963-64 and 1964-65 (sic) for non-compliance of notices under sections 143(2) and 142(1) for all the three years and also for non-compliance of notices u/s 139(2) for 1963-64 and 1964-65. It

appears that the Income Tax Officer proceeded u/s 144 in assessments made for the years 1963-64 and 1964-65. Returns of income for assessment years 1963-64 and 1964-65 were filed on August 16, 1965, after the assessment u/s 144 had been completed. On an appeal filed by the assessee the Appellate Tribunal directed the Income Tax Officer to reframe the assessments in accordance with law cancelling the best judgment assessment. After the decision of the Tribunal, when the assessments were being made afresh for the three years under reference the Income Tax Officer charged interest (what is popularly known as penal interest) u/s 139 for the delay in filing the returns and also levied penalties u/s 271(1)(a). The interest charged u/s 139 for the assessment years 1962-63, 1963-64 and 1964-65 came to Rs. 1,554, Rs. 5,051 and Rs. 1,333, respectively.

3. The assessee thereafter applied for rectification under the provisions of Section 154 of the Income Tax Act, 1961, and requested that the interest charged u/s 139(1) may be deleted as the assessee had not filed applications seeking extension of time for filing the returns. The applications for rectification were rejected by the Income Tax Officer on the ground that there was no mistake apparent from the record. The assessee preferred appeals against the orders refusing to entertain the petitions u/s 154 and the Appellate Assistant Commissioner affirmed the view taken by the Income Tax Officer. The matter was taken in further appeal before the Income Tax Appellate Tribunal and the assessee contended that the Andhra Pradesh High Court had held in *Kishanlal Haricharan Vs. Income Tax Officer, A-Ward* that interest cannot be charged unless the assessee had filed an application for extension of time in Form No. 6 and it was contended by the present assessee before the Tribunal that there was a mistake committed by the Income Tax Officer in charging interest and this mistake was apparent from the record. The Tribunal accepted the contention of the assessee by holding that once a decision of the Andhra Pradesh High Court was rendered it was binding on all courts, quasi-judicial authorities and other authorities in the State of Andhra Pradesh. Therefore, the Tribunal observed that the Income Tax Officer committed a mistake apparent from the record in charging the interest. Accordingly, the Tribunal held that the applications filed by the assessee u/s 154 should be allowed. Therefore, at the instance of the revenue the question hereinabove set out has been referred to us for our opinion.

4. The scope of Section 154 of the Income Tax Act has been explained by the Supreme Court in *T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay*, . Section 154 provides for rectification of any mistake apparent from the record. Hegde J., delivering the judgment of the Supreme Court in *T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay*, , has pointed out 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. At page 53 of the report Hegde J., speaking

for the court, observed :

"It is clear that the question whether Section 17(1) of the Indian Income Tax Act, 1922, was applicable to the case of the first respondent is not free from doubt. Therefore, the Income Tax Officer was not justified in thinking that on that question there can be no two opinions. It was not open to the Income Tax Officer to go into the true scope of the relevant provisions of the Act in a proceeding u/s 154 of the Income Tax Act, 1961. 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 conceivably be two opinions. As seen earlier, the High Court of Bombay opined that the original assessments were in accordance with law though in our opinion the High Court was not justified in going into that question." The Supreme Court in T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, left the question open whether the distinction between the expression "error apparent on the face of the record" occurring in the context of the powers of the High Court under Article 226 of the Constitution and the expression "mistake apparent from the record" occurring in Section 154 of the Income Tax Act was necessary to be spelled out. However, the principles laid down by the Supreme Court in cases arising under Article 226 were applied in the case arising u/s 154 of the Income Tax Act in T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, .

Mr. Rama Rao, the learned standing counsel for the Income Tax department, has urged before us that in the instant case the question whether interest u/s 139 is chargeable in respect of an assessee who has not applied for extension of time is a debatable question. He drew our attention to the decision in Kishanlal Haricharan Vs. Income Tax Officer, A-Ward and pointed out that Obul Reddi J. (as he then was) sitting singly in this High Court has sought to distinguish the decision in Progressive Engineering Co. Vs. Income Tax Officer, and the decision in Kishanlal Haricharan Vs. Income Tax Officer, A-Ward in connection with a different set of facts. A Division Bench of the Andhra Pradesh High Court consisting of Chinnappa Reddy and Madhava Reddy JJ. held in Kishanlal Haricharan Vs. Income Tax Officer, A-Ward that it is only when an assessee requests for time under the third clause of the proviso to Section 139(1)(b) that he can be directed to pay penal interest as provided in the clause and where the assessee does not request for time for submitting a return the third clause has no application. Further consequences may follow. For example, the petitioner may subject himself to the penalty provided u/s 271 of the Act. The petitioner may also subject himself to a best judgment assessment by the Income Tax Officer. Those consequences may follow when the assessee fails to submit a return, but the consequence of paying penal interest does not follow. The assessee is liable to pay penal interest under the third clause of the proviso to Section 139(1)(b) only if he asks for extension of time under that clause. This decision in Kishanlal Haricharan Vs. Income Tax Officer, A-Ward was followed by another Division Bench consisting of Chinnappa Reddy and A. D. V. Reddy JJ. in

R.C. No. 81 of 1970 [Commissioner of Income Tax Vs. M. Manik Rao, (Appendix)] decided on 17th December, 1971. The same principle was reiterated by Chinnappa Reddy J., delivering the judgment of the Division Bench, as follows (See infra p. 581):

"Since interest was not chargeable unless time had been extended, the Tribunal was justified in holding that time must have been extended on the application of the assessee. "

5. In the earlier portion of the judgment he has also reiterated (See infra p. 581):

" Since interest is chargeable under the third clause of the proviso only when the Income Tax Officer extends the time for the furnishing of the return on the application of the assessee, the Appellate Tribunal presumed that there must have been an application by the assessee and that the Income Tax Officer must have extended the time for filing the return. The Tribunal thought that it was justified in drawing such a presumption as the correct state of facts was not clear from the records of the case which were available to them. We cannot say that the Tribunal erred in drawing such an inference. "

6. Obul Reddi J. (as he then was) sitting singly decided the case of Progressive Engineering Co. Vs. Income Tax Officer, and he distinguished the case of Kiskanlal Haricharan [1971] 82 ITR 661 in the following manner :

" Clause (iii) of the proviso has to be read with Sub-section (4) of Section 139(1) of the Act. If Clause (iii) of the proviso is read with Sub-section (4) of Section 139(1) then the position becomes clear that any person, who has not furnished returns within the time allowed to him under Sub-section (1) will come within the mischief of Clause (iii) of the proviso to Section 139(1). Therefore, the fact that no application was made by the petitioner for extension of time is not relevant at all in view of Sub-section (4) of Section 139(1) of the Act."

7. Where returns have been filed beyond the dates mentioned in Clauses (i) and (ii), Section 139(2) would automatically be attracted. The mere fact that the assessee filed returns pursuant to the notice issued to him u/s 148 does not make any difference, for what has to be seen is whether he has filed the returns beyond the dates mentioned in Clauses (i) and (ii) and not whether he has applied for extension of time under Clauses (i) and (ii) and failed to furnish the returns within the time allowed either under Clause (i) or Clause (ii) of the proviso. In paragraph 6 of his judgment Obul Reddi J. (as he then was) observed (page 228):

" The case on hand is one where returns have been filed beyond the dates mentioned in Clauses (i) and (ii) of the proviso to Section 139(1) and, therefore, Sub-section (4) of Section 139 is automatically attracted. The mere fact that the petitioner filed the returns pursuant to the notice issued to him u/s 148 threatening to assess him u/s 147 does not make any difference, for what has to be seen is whether he has filed the returns beyond the dates mentioned in

Clauses (i) and (ii) and not whether he applied for extension of time under Clauses (i) and (ii) and failed to furnish the returns within the time allowed either under Clause (i) or Clause (ii) of the proviso. The Division Bench in the case cited above was not dealing with a case which falls under Sub-section (4) of Section 139. That was a case where no returns were at all filed even though the Income Tax Officer issued a notice to the petitioner therein u/s 139(2) calling upon him to submit a return before a particular date. Therefore, the case where no returns were filed stands on a different footing from a case where returns were filed, pursuant to a notice issued by the Income Tax Officer u/s 148."

8. It is true, as Sri M. J. Swamy appearing for the assessee pointed out, that in the instant case the rectification application was made by the assessee before July, 1971, which was the last date for filing the application u/s 154. It is also true, as he emphasised, that the decision of Obul Reddi J. (as he then was) in *Progressive Engineering Co. Vs. Income Tax Officer*, was delivered on July 11, 1976, and, therefore, at the time when the rectification application first came up before the Income Tax Officer some time before July, 1971, there was not question of the department relying upon the decision of Obul Reddi J. (as he then was).

9. However, it must be pointed out that the ground on which Obul Reddi J. (as he then was) distinguished the decision of the Division Bench in *Kishanlal Haricharan Vs. Income Tax Officer, A-Ward* could have been urged as a ground for distinguishing the decision in the Division Bench's ruling in *Kishanlal Haricharan Vs. Income Tax Officer, A-Ward*. On the facts of this case, when the assessment orders came to be passed on merits u/s 143(1) of the Income Tax Act, returns were, in fact, filed. But they were filed after the due dates. Therefore, the question of fact whether this was a proper ruling in the eye of the law, secondly, whether the returns so filed, in fact, distinguished the case from *Kishanlal Haricharan Vs. Income Tax Officer, A-Ward*, whether no returns at all were filed and whether the provisions of Section 139(4) could be read in the light of the facts of this particular case, certainly raise a debatable question of law in the instant case. In these circumstances, in view of the decision of the Supreme Court in *T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay*, it is clear that the provisions of Section 154 were certainly not applicable. Here, the mistake could only be established by a long drawn process of reasoning on points on which there could conceivably be two opinions, namely, whether the case fell within the principle laid down in *Kishanlal Haricharan Vs. Income Tax Officer, A-Ward* or whether it could be distinguished on the line of reasoning adopted by Obul Reddi J. (as he then was) in *Progressive Engineering Co. Vs. Income Tax Officer*. Hence, it is obvious that it was not open to the Income Tax Officer or any other authority functioning u/s 154 of the Income Tax Act to rectify the earlier orders charging interest in respect of each of the three assessment years.

10. In view of this conclusion, we must answer the question referred to us in the

negative, that is, in favour of the revenue and against the assessee. The assessee will pay the costs of this reference to the Commissioner of Income Tax.