

(1978) 04 CAL CK 0077

In the Calcutta High Court

Case No : Income-tax Reference No. 46 of 1976

Amalgamated Coalfields Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 12-04-1978

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 154, 214

Citation : (1979) 116 ITR 383

Hon'ble Judges : Sudhindra Mohan Guha, J;S.C. Deb, J

Bench : Division Bench

Advocate : Kalyan Ray and Manas Banerjee, for the Appellant;Ajit Sengupta and Prabir Majumdar, for the Respondent

Judgement

Deb, J.—This is a reference u/s 256(1) of the Income Tax Act, 1961. The assessee is a limited company. The assessment year involved is 1964-65.

2. During the financial year 1963-64, the assessee paid Rs. 12,56,466 as advance tax u/s 210 of the I.T. Act, 1961, for the aforesaid assessment year. Its business income was assessed at Rs. 36,05,811 u/s 143(3) of the Act and the tax claimed was more than the advance tax paid by the assessee. The assessee filed appeal before the AAC against the assessment order. The AAC reduced the income by Rs. 14,98,592(?) and also included additional income of Rs. 12,637. Thus, the revised business income of the assessee became Rs. 21,20,760.

3. The ITO then passed an order dated March 17, 1971, u/s 251 of the Act calculating the tax at Rs. 9,68,567 against which the assessee had already paid advance tax of Rs. 12,56,466 and, after allowing the assessee Rs. 60,899 as interest u/s 214, calculated the total amount refundable at Rs. 3,48,798 to the assessee.

4. Subsequently, the ITO thought that he had wrongly allowed the aforesaid interest and accordingly passed an order u/s 154 recomputing the amount refundable to the assessee at Rs. 2,87,899 by withdrawing the interest of Rs.

60,899. The appeal filed by the assessee from the rectification order was dismissed by the AAC. The assessee then filed a further appeal. It was urged on its behalf before the Tribunal that the order of the ITO u/s 251 formed part of the regular assessment and that the subsequent order of the ITO u/s 154 was illegal.

5. The departmental representative, on the other hand, argued before the Tribunal that there was an apparent mistake in the order of the ITO passed u/s 251 and, therefore, the ITO was justified in passing the aforesaid order u/s 154 of the Act. Reliance was also placed on the case of *Sir Shadilal Sugar and General Mills Ltd. Vs. Union of India (UOI)* and *Another*, in support of the contention that the words "regular assessment" in Section 214 mean the first assessment and not the revised assessment made in terms of any direction or order of the appellate authorities.

6. In view of the aforesaid judgment of the Allahabad High Court, the Tribunal held that there was a patent mistake in the order of the ITO passed u/s 251 relating to the computation of the amount refundable to the assessee. Accordingly, the Tribunal also held that the ITO was justified in rectifying the said mistake u/s 154 of the Act. Thereafter, the Tribunal referred the following questions to this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that there was a patent mistake within the meaning of Section 154 of the I.T. Act, 1961, in the order of the ITO, dated March 17, 1971?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was not entitled to interest u/s 214 of the I.T. Act, 1961 ?"

7. Mr. Kalyan Ray, learned counsel for the assessee, argues before us that the expression "regular assessment" in Section 214(1) of the Act includes a revised assessment made by the ITO in compliance with the directions of the higher authorities. He further argues that a revised assessment can only be made u/s 143 of the Act in view of the Division Bench judgment of this court in the case of *Kooka Sidhwa and Co., Calcutta Vs. The Commissioner of Income Tax, W.B.,* .

8. Mr. Ray also cites the case of *Chloride India Ltd. Vs. Commissioner of Income Tax and Others*, in support of his contention that the expression "regular assessment" in Section 214 of the Act includes a revised assessment made by the ITO in order to give effect to the directions of the appellate authorities.

9. Mr. Ajit Sengupta, learned counsel for the revenue, submits before us that the *Chloride India Ltd. Vs. Commissioner of Income Tax and Others*, was wrongly decided. He also cites the case of *Lala Laxmipat Singhania Vs. Commissioner of Income Tax and Others*, in which the Allahabad High Court has dissented from the *Chloride* case.

10. Since an appeal has been filed from the *Chloride India Ltd. Vs. Commissioner of Income Tax and Others*, , which is pending in this court, it will not be proper

for us to express any opinion on the aforesaid contention of Mr. Sengupta and accordingly we leave it open.

11. By citing the case of Income Tax Officer, "E" Ward and Others Vs. Raleigh Investment Co. Ltd., , Mr. Sengupta argues that there was a mistake apparent from the record as rightly held by the Tribunal. But the aforesaid case was decided on different facts and, that apart, it is settled law that the question as to whether the proceedings u/s 154 could be taken or not must depend on the facts and circumstances of each case.

12. Now, in Commissioner of Income Tax Vs. General Electric Co. of India Ltd., , it has been held by this court that the question as to whether there is a mistake apparent from the record should not be determined on the basis of an amending Act giving retrospective operation to a section but on the basis of the section as it stood prior to the amending Act. Mr. Sengupta thereafter cites this case as an authority in support of his argument that the Chloride India Ltd. Vs. Commissioner of Income Tax and Others, , which was decided long after the appellate order of the Tribunal, should not be taken into consideration in determining the question as to whether there could be two conceivable opinions on the point in issue before the Tribunal.

13. The law is, however, well settled. The proceedings u/s 154 cannot be initiated if two opinions may conceivably be taken on the legal issue involved in it. Merely because the Chloride India Ltd. Vs. Commissioner of Income Tax and Others, was decided subsequent to the appellate order of the Tribunal, it cannot be said that it must be left out of our consideration in determining this issue.

14. Further, the case of Commissioner of Income Tax Vs. General Electric Co. of India Ltd., was decided on its special and peculiar facts and in our opinion the principles stated therein are not of universal application and do not apply to the instant case before us.

15. The case of Sir Shadilal Sugar and General Mills Ltd. Vs. Union of India (UOI) and Another, was not followed in the Chloride India Ltd. Vs. Commissioner of Income Tax and Others, , which on its turn, was not followed in Lala Laxmipat Singhania Vs. Commissioner of Income Tax and Others, . Therefore, it cannot be said that there was a mistake apparent from the record.

16. In the premises, we answer question No. 1 in the negative and in favour of the assessee and decline to answer question No. 2 which has become purely academic in view of our aforesaid answer to question No. 1.

17. There will be no order as to costs.

Sudhindra Mohan Guha, J.

18. I agree.