(1999) 11 KL CK 0047

In the High Court Of Kerala

Case No : Income-tax Reference No. 240 of 1997

Asian Techs Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 06-11-1999

Acts Referred:
Income Tax Act, 1961 — Section 154, 35B, 35B(1)

Citation : (2000) 160 CTR 361 : (2000) 1 ILR (Ker) 608 : (2000) 243 ITR 262

Hon'ble Judges : Arijit Pasayat, C.J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : Joseph Markose and Thomas Vellappally, for the Appellant; P.K.R. Menon and George K. George, for the Respondent

Judgement

Arijit Pasayat, C.J.—Accepting an application u/s 256(1) of the Income Tax Act, 1961 (in short "the Act"), the following questions have been referred to this court for opinion by the Income Tax Appellate Tribunal, Cochin Bench (in short "the Tribunal") :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that even though the assessee might be entitled to the claim for deduction u/s 35B(1)(b)(viii) of the Income Tax Act the said claim cannot be entertained as the order of the Income Tax Officer sought to be rectified had merged with the order of the Appellate Tribunal ?

2. Whether, on the facts and in the circumstances of the case, is not the assessee entitled to be allowed its claim for deduction u/s 35B(1)(b)(viii) of the Income Tax Act by rectification of the assessment order for the year 1980-81 ?"

2. The factual position, which is also undisputed, is as follows : The assessee is a company carrying on business as engineers and contractors. During the course of assessment for the assessment year 1980-81, the assessee had claimed deductions u/s 35B(1)(b)(iv) and (vii) of the Act. The Assessing Officer, by notice dated July 18, 1983, required the assessee to show cause as to why the said

claims shall not be disallowed. The assessee filed detailed objections on July 21, 1983, but in the assessment order dated September 14, 1983, there was no reference to the claim for deduction. Being aggrieved by the said order of the Assessing Officer, an appeal was preferred before the Commissioner of Income Tax (Appeals) (in short "the CIT(A)") on various grounds including denial of deductions as claimed. By order dated October 8, 1985, the Commissioner of Income Tax (Appeals) rejected claim of the assessee. The matter was further carried by the assessee before the Tribunal on various grounds including denial of deductions as claimed. By order dated May 12, 1987, in ITA Nos. 835 to 835/ Coch of 1985 (?) relating to the four assessment years including 1980-81, deductions as claimed were allowed. While the abovementioned appeals were pending before the Tribunal, the assessee made a claim by a petition filed on November 19, 1986, before the Assessing Officer for rectification of the assessment order for the year in question u/s 154 of the Act and to allow the claim u/s 35B(1)(b)(viii) in respect of the expenditure incurred wholly and exclusively for the performance of service in connection with the execution of contracts for supply of services and facilities at Bhutan. The total expenditure was stated to be Rs. 34,22,367.19 and eligible deduction (one third thereof) was Rs. 11,40,189. The Assessing Officer rejected the petition by order dated January 23, 1989. An appeal was preferred before the Commissioner of Income Tax (Appeals) against the order rejecting the application for rectification u/s 154. The assessee''s stand was that when the materials were available in the assessment record for grant of relief, the application u/s 154 was clearly maintainable and relief could not be refused merely on the ground that the assessee had omitted to claim the same originally. The Commissioner of Income Tax (Appeals) dismissed the appeal by his order dated May 17, 1990. The assessee preferred an appeal before the Tribunal. By order dated August 11, 1995, the appeal was dismissed on the ground that the order of the Assessing Officer had already merged with the order of the appellate authority and, therefore, the claim raised could not be entertained. The assessee, in its application u/s 256(1) of the Act, pointed out that the application was made much before the order of the Tribunal, but the Assessing Officer had not disposed of the same expeditiously. In any event, the issue was not before the Tribunal in connected appeals. Therefore, the assessment order could not have merged with the appellate order. As indicated above, the Tribunal accepted the prayer for reference and referred questions, as set out above, for opinion.

3. Learned counsel for the assessee submitted that the authorities failed to consider the true scope and ambit of Section 154 of the Act in its proper perspective. Since all the relevant materials were on record, the claim should have been allowed. According to him, when any mistake apparent from the record is noticed, the jurisdiction is conferred on the Assessing Officer for rectifying the mistake. The expression "record" as used in Section 154 will include all materials which form part of the assessment proceedings and not only the return. Even if there was omission to claim relief allowable to him, it could

not be said that he is not entitled to get relief. Learned counsel for the Revenue, on the other hand, submitted that in view of the definite limits of jurisdiction exercisable u/s 154, the prayer has rightly not been entertained.

4. Though the question of merger of the assessment order with the appellate order was noticed by the Tribunal, learned counsel for the parties submitted that the said question is really of academic interest, when the applicability of Section 154 of the Act is decided.

5. Section 154 deals with rectification of mistakes. The said provision, at the relevant time, so far relevant, reads as follows :

"154. Rectification of mistake.--(1) With a view to rectifying any mistake apparent from the record-(a) the Income Tax Officer may amend any order of assessment or of refund or any other order passed by him ;

(b) the Appellate Assistant Commissioner or the Commissioner (Appeals) may amend any order passed by him u/s 250 or Section 271 ;

(c) the Commissioner may amend any order passed by him in revision u/s 263 or Section 264 . . .

(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, and where the authority concerned is the Appellate Assistant Commissioner or the Commissioner (Appeals) by the Income Tax Officer also . . . ."

6. In order to bring an application u/s 154, the mistake must be "apparent" from the record. "Apparent" means "open to view, visible, evident, appears, appearing as real and true, conspicuous, manifest, obvious, seeming". Section 154 does not enable an order to be reversed by revision or by review, but permits only some error which is apparent on the face of the record to be corrected. Where an error is far from self-evident, it ceases to be an apparent error. It is, no doubt, true that a mistake capable of being rectified u/s 154 is not confined to clerical or arithmetical mistakes. On the other hand, it does not cover any mistake which may be discovered by a complicated process of investigation, argument or proof. As observed by the apex court in Master Construction Co. (P.) Ltd. v. State of Orissa [1966] 17 STC 360, an error which is apparent on the face of the record should be one which is not an error which depends for its discovery on elaborate arguments on questions of fact or law. Similar view was also expressed in Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, . It is to be noted that the language used in Order XLVII, rule 1, of the Code of Civil Procedure, 1908 (in short "the CPC"), is different from the. language used in Section 154 of the Act. Power is given to various authorities to rectify any mistake "apparent from record" u/s 154 of the Act. In the Civil

Procedure Code, the words are "an error apparent on the face of the record". The two provisions do not mean the same thing. The power of officers mentioned in Section 154 to rectify "any mistake apparent from the record" is undoubtedly not more than that of the High Court to entertain a writ petition on the basis of "an error apparent on the face of the record", (see T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay,). Mistake is an ordinary word, but in taxation laws, it has a special significance. It is not an arithmetical or clerical error alone that comes within its purview. It comprehends errors which, after a judicious probe into the record from which it is supposed to emanate, are discerned. The word "mistake" is inherently indefinite in scope, as what may be a mistake for one may not be one for another. It is mostly subjective and the dividing line in border areas is thin and indiscernible, It is something which a duly and judiciously instructed mind can find out from the record. In order to attract the power to rectify u/s 154, it is not sufficient if there is merely a mistake in the orders sought to be rectified. The mistake to be rectified must be one apparent from the record. A decision on a debatable point of law is not a mistake apparent from the record. The plain meaning of the word "apparent" is that it must be something which appears to be so ex facie and it is incapable of argument or debate. It, therefore, follows that a decision on a debatable point of law or fact or failure to apply the law to a set of facts which remains to be investigated cannot be corrected by way of rectification. As was observed in Anchor Pressings (P) Ltd. Vs. Commissioner of Income Tax, U.P. and Others, , the jurisdiction u/s 154 to rectify mistakes is no doubt wider than that provided in Order XLVII, Rule 1 of the Civil Procedure Code. None the less, there must be material to support the claim for a particular relief and unless such material can be referred to, no grievance can be made if the Assessing Officer refuses such relief.

7. In view of the legal position as set out above, the authorities were justified in not accepting the claim of the assessee for rectification u/s 154 of the Act.

8. Question No. 2 referred to above is answered against the assessee and in favour of the Revenue. In view of said answer, the other question is really of academic nature and is not answered.

9. Reference application is accordingly disposed of.

