(2006) 11 GUJ CK 0102

In the Gujarat High Court

Case No : Income-tax Reference No. 111 of 1996

Commissioner of Income Tax APPELLANT

Vs

Maheshkumar A. Rathod RESPONDENT

Date of Decision : 28-11-2006

Acts Referred:
Income Tax Act, 1961 — Section 116, 139, 142(1), 143(1), 143(2)

Citation : (2008) 296 ITR 146 : (2009) 176 TAXMAN 283

Hon'ble Judges : Y.R. Meena, Acting C.J.;A.S. Dave, J

Bench : Division Bench

Advocate : Manish R. Bhatt, for the Appellant;

Judgement

1. The following question has been referred for the opinion of this court:

Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the issue being debatable, the Assessing Officer was not justified in disallowing deduction claimed by way of adjustment u/s 143(1)(a) of the Income Tax Act, 1961?

2. At the outset, Mr. M.R. Bhatt, learned Counsel for the Revenue, fairly admits that the issue is covered against the Revenue by a judgment of this court dated November 2, 2006, in Commissioner of Income Tax Vs. Manubhai M. Patel,

3. This Court has considered the issue in the case of Commissioner of Income Tax Vs. Manubhai M. Patel, as under (page 145):

5. Section 143(1)(a) of the Act says that where a return has been made u/s 139, or in response to a notice under Sub-section (1) of Section 142, then, particular powers can be exercised by the Assessing Officer. Section 154 of the Act relates to rectification of mistakes. With a view to rectify any mistake apparent from the records, the Income Tax authorities referred to in Section 116 may amend any order passed by it under the provisions of the Act. In the present matter, proceedings were drawn u/s 143(1)(a) on the premises that such deductions

were not permissible. It is not in dispute before us that on the date when the assessee was claiming the deductions, the judgments of the Tribunal and of the different High Courts were in favour of the assessee wherein the Tribunals or the High Courts had observed that to the extent of 40 per cent, deductions would be permissible subject to verification. We are not concerned with the judgments of the Tribunals or of the High Courts, but, the question would be that whether the Assessing Officer was justified in proceeding u/s 143(1)(a), especially, when the matter was debatable and the Assessing Officer could proceed either u/s 143(2) or Section 143(3) of the Act.

6. The apex court, in the matter of T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, , has observed 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.

7. From the said judgment of the apex court, it would be clear that in a case where the mistake is apparent from the record, powers u/s 154 of the Act could always be exercised. In the present matter, the Assessing Officer, in view of the debatable issue relating to deduction or disallowance of the deductions, could not proceed u/s 143(1)(a) of the Act.

4. When the issue relating to deduction or disallowance of deductions is debatable, the Assessing Officer cannot make any adjustment in an order u/s 143(1)(a). We, therefore, see no infirmity in the order of the Tribunal. Accordingly, we answer the question referred in favour of the assessee and against the Revenue. The reference stands disposed of.

