
(2001) 07 KL CK 0062

In the High Court Of Kerala

Case No : Income-tax Reference No's. 137 and 138 of 1997

Commissioner of Income Tax

APPELLANT

Vs

Malabar Tile Works

RESPONDENT

Date of Decision : 25-07-2001

Acts Referred:

Income Tax Act, 1961 — Section 116, 147, 154, 183, 185

Citation : (2001) 252 ITR 650

Hon'ble Judges : S. Sankarasubban, J;A. Lekshmikutty, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; P. Balachandran, for the Respondent

Judgement

S. Sankarasubban, J.—These Income Tax references at the instance of the Revenue, relate to the assessment years 1985-86 and 1986-87. The question referred u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), is as follows :

"Whether, on the facts and in the circumstances of the case, will not the omission to apply the law, namely, Section 183(b), amount to mistake apparent on record ?"

2. The facts of the case are as follows :

For the relevant assessment years, the assessee-firm applied for registration u/s 185(1)(b) of the Act. Registration was refused by the Assessing Officer and for all these years, the assessee was an unregistered firm. Subsequently, the Assessing Officer issued notice u/s 154 of the Act stating that a mistake was committed by the assessee in not assessing the respondent/assessee u/s 183(b) of the Act.

3. An objection was filed to the petition by the assessee. It was also rejected. Against that order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals), after hearing both sides, allowed the appeal. He took the view that there was no error

apparent on the face of the record. He also relied on a decision of the Madras High Court reported in Addl. Commissioner of Income Tax Vs. Shree Shankar and Co., . Against that order, the Revenue preferred an appeal before the Income Tax Appellate Tribunal. The Tribunal, by its order dated July 19,1995, confirmed the order of the Commissioner of Income Tax (Appeals) and dismissed the appeal.

4. We heard learned senior counsel for the Revenue, Sri P.K. Raveendranatha Menon, and Sri P. Balachandran, learned counsel for the assessee.

5. Sri Raveendranatha Menon submitted that it is a case where there was omission on the part of the Department to assess the assessee u/s 183(b) of the Act. According to learned counsel, this amounts to a mistake on the face of the records. Hence, the order passed by the Tribunal as well as the Commissioner is not correct. Learned counsel for the assessee submitted that there was no mistake in the order. The assessee had applied for registration u/s 185 of the Act. But that was not allowed. Subsequently, the assessment was made as per the returns. There was no mistake in the assessment order. Hence, it cannot be said that there is any mistake in the order to enable the Revenue to make rectification.

6. It appears that it is on the basis of the objection by the audit party that if the assessment was as a registered firm, it will have been more beneficial to the Revenue that the notice u/s 154 of the Act was issued. The question before us is whether the exercise of power u/s 154 is valid or not. Section 154 of the Act states that with a view to rectifying any mistake apparent from the record an Income Tax authority referred to in Section 116 may amend any order passed by it under the provisions of the Act. So the exercise should be to rectify any mistake apparent from the record. It is not the case that the Assessing Officer wanted to assess the assessee u/s 183(b) of the Act and that it was by a mistake that it was not done. The only case is that he failed to apply u/s 183(b) of the Act earlier. As has been repeatedly held by courts, it is not sufficient, if there is merely a mistake in the order sought to be rectified. The mistake to be rectified must be one apparent from the records.

7. A case similar to the present case arose before the Madras High Court in the decision reported in Addl. Commissioner of Income Tax Vs. Shree Shankar and Co., . There, the facts were just the converse from what has happened in the present case. In that case, the officer assessed the firm as a registered firm. Subsequently, on the objection of the audit party that treating the firm as a registered firm would not be beneficial to the Revenue, the officer took proceedings u/s 154 and rectified the assessment. On appeal, this order was set aside on the ground that it fell outside the scope of Section 154 and his view was upheld by the Tribunal. The matter was then referred to the High Court. The court held as follows (headnote): "Section 155 of the Income Tax Act, 1961, provides only for the records of the firm being used in the assessment of a partner so as to rectify it in accordance with the assessment of the firm. There is no provision for rectification of an order passed u/s 183(b) on the firm in the

light of the return submitted by, or the assessment on, the partners. Section 183(b) is a provision enabling the Income Tax Officer to treat a firm as a registered firm if he was of the opinion that the tax payable by the partners individually if the firm were assessed as a registered firm would be greater than the aggregate amount of the tax payable by the firm. In such a case, if the officer had really some information which came into his possession subsequent to the assessment he may have powers to start proceedings u/s 147(b) but he cannot have recourse to Section 154. This is not a case where action can be taken both u/s 147 and Section 154 so that if action was taken under one of them instead of the other such action could not be held to be bad". The Gujarat High Court had occasion to considered the question in P.M. Bharucha and Co. Vs. G.S. Venkatesan Income Tax Officer, Circle I Ward A, Bhavnagar, . In that case, it was held that a mistake apparent on the face of the record must be one to point out which no elaborate argument is required. It must be a glaring, obvious or self-evident mistake. If it is a mistake which requires to be established by complicated process of investigation, argument or proof, it cannot be regarded as a mistake apparent from the record.

8. Thus, on going through the facts and circumstances of the case, we are satisfied that there was no mistake apparent from the record to exercise the power u/s 154 of the Act. Merely because the Assessing Officer failed to assess the firm as a registered firm it does not mean that a mistake has been committed. Hence, we answer the question in the negative and against the Department.