(2007) 08 DEL CK 0077

In the Delhi High Court

Case No : IT Reference No. 165 of 1984

Commissioner of Income Tax APPELLANT

Vs

Modi Pon Ltd. RESPONDENT

Date of Decision : 16-08-2007

Acts Referred:
Income Tax Act, 1961 — Section 154(1), 214, 256(1)

Citation : (2008) 170 TAXMAN 569

Hon'ble Judges : Madan B. Lokur, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : P.L. Bansal and Vishnu Sharma, for the Appellant; Santosh Kumar Aggarwal, for the Respondent

Judgement

1. In this reference, the following question of law has been referred for our opinion u/s 256(1) of the income tax Act, 1961 ("Act"): Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the question as to the existence of apparent mistake in the ITO''s assessment order dated 17-4-1978 had to be determined not on basis of Allahabad ruling in the case of Sir Shadilal Sugar and General Mills Ltd. Vs. Union of India (UOI) and Another, . But in the light of decision in the case of National Agricultural Co-opt. Marketing Federation v. Union of India [1981] 130 ITR 92 (Delhi), through that decision case to be reported subsequent to the rectificationary order dated 7-6-1978 of the ITO ?

It appears that there was a conflict of opinion between the various High Courts on the interpretation of expression "regular assessment". Before the Assessing Officer, learned counsel for the assessee had relied upon a decision of the Calcutta High Court in Chloride India Ltd. Vs. Commissioner of Income Tax and Others, whereas learned counsel for the revenue relied upon a decision of the Allahabad High Court in Sir Shadilal Sugar and General Mills Ltd. Vs. Union of India (UOI) and Another, . While exercising the power of rectification u/s 154(1) of the Act, the Assessing Officer withdrew the refund of interest to the assessee u/s 214 of the Act. 2. Our attention has been drawn to a subsequent decision of the Allahabad High Court in Commissioner of Income Tax Vs. Modi Industries, where reference is made to a decision of the Bombay High Court in Commissioner of Income Tax Vs. Tata Chemicals Ltd., The Allahabad High Court came to the conclusion that the Assessing Officer could not exercise power u/s 154(1) of the Act to rectify a mistake related to a question of law.

3. This Court in J.M.A. Industries Ltd. Vs. Commissioner of Income Tax, has taken a similar view by relying upon Chloride India Ltd.''s case (supra). This Court also referred to a decision of Supreme Court in Balram (T.S.), T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, wherein it has been categorically held that no rectification of an assessment order can be made if there are different opinions possible on the same issue.

4. Following the decisions rendered as mentioned above, we answer the above question in the affirmative, in favour of the assessee and against the revenue. This reference is disposed of accordingly.

