
(1994) 02 MP CK 0025
In the Madhya Pradesh High Court
Case No : M.C.C. No. 156 of 1993

Commissioner of Income Tax

APPELLANT

Vs

M.P. Electricity Board

RESPONDENT

Date of Decision : 09-02-1994

Acts Referred:

Income Tax Act, 1961 — Section 154, 256, 32A, 32A(4)

Citation : (1994) 210 ITR 425

Hon'ble Judges : U.L. Bhat, C.J.; P.P. Naolekar, J

Bench : Division Bench

Advocate : V.K. Tankha, for the Appellant;

Judgement

1. Shri V.K. Tankha, advocate, for the petitioner. He is heard on admission.
2. This application u/s 256(2) of the Income Tax Act, 1961, is filed by the Revenue seeking to compel the Income Tax Appellate Tribunal to refer to the High Court three purported questions of law. We have heard learned counsel for the Revenue.
3. The dispute is regarding the investment allowance relating to the assessment year 1981-82 claimed by the assessee u/s 32A(4) of the Act. The Assessing Officer disallowed the claim and the same was confirmed by the Tribunal by order dated June 21, 1989. Subsequently, Section 32A(4) was amended retrospectively from April 1, 1976. Thereafter, the assessee moved the Tribunal for rectification u/s 154 of the Act. The application was opposed by the Revenue but was allowed by the Tribunal. The Tribunal declined to refer to the High Court the questions arising in relation to the rectification order.
4. It is not the contention of the Revenue that even under the amended Act, the assessee is not eligible for investment allowance. On the other hand, it is the common case that if the law as amended was the law in force during the relevant year corresponding to the assessment year, the assessee would be entitled to the allowance. According to the Revenue, the refusal to grant the allowance was

correct as the law actually stood at the relevant time and the fact that retrospectivity was given to a subsequent amendment cannot be a ground for review or rectification.

5. We are not able to agree with the submission made on behalf of the Revenue. When the law is amended with retrospective effect, the fiction is that all must proceed on the basis that the law at the relevant time was the law as amended subsequently. That being so, the legal fiction is apparently capable of being carried forward to hold that when the earlier order was passed, it was passed in contravention of the amended law which by fiction is deemed to be in force at that time. This clearly is an error apparent on the face of record.

6. The matter has been made clear by the Supreme Court in *M.K. Venkatachalam, I.T.O. and Another Vs. Bombay Dyeing and Mfg. Co., Ltd.*, In that case, under the law actually existing at the relevant time, the assessee was entitled to credit for Rs. 50,603 being interest at two per cent. on tax paid in advance u/s 18A(5) of the Act. The provision was subsequently amended with retrospective effect. Under the amended law, the assessee would be entitled to only Rs. 21,157 as interest. The Supreme Court observed (at page 149) :

"At the time when the Income Tax Officer applied his mind to the question of rectifying the alleged mistake, there can be no doubt that he had to read the principal Act as containing the inserted proviso as from April 1, 1952. If that be the true position then the order which he made giving credit to the respondent for Rs. 50,603.15-0 is plainly and obviously inconsistent with a specific and clear provision of the statute and that must inevitably be treated as a mistake of law apparent from the record. If a mistake of fact apparent from the record of the assessment order can be rectified u/s 35, we see no reason why a mistake of law which is glaring and obvious cannot be similarly rectified. Prima facie it may appear somewhat strange that an order which was good and valid when it was made should be treated as patently invalid and wrong by virtue of the retrospective operation of the amendment Act. But such a result is necessarily involved in the legal fiction about the retrospective operation of the Amendment Act. If, as a result of the said fiction, we must read the subsequently inserted proviso as forming part of Section 18A(5) of the principal Act as from April 1, 1952, the conclusion is inescapable that the order in question is inconsistent with the provisions of the said proviso and must be deemed to suffer from a mistake apparent from the record."

7. The above reasoning squarely applies to the facts of the present case and in relation to the exercise of power u/s 154 of the Act. The Tribunal was, therefore, justified in declining to make the reference. The petition is dismissed.