

(2003) 12 MP CK 0015

In the Madhya Pradesh High Court

Case No : Income Tax R. No. 19 of 1999

Commissioner of Income Tax

APPELLANT

Vs

Ralson Industries Ltd.

RESPONDENT

Date of Decision : 15-12-2003

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 154, 256(2), 263, 263(1)

Citation : (2005) 197 CTR 680 : (2005) 276 ITR 368

Hon'ble Judges : Dipak Misra, J;A.K. Shrivastava, J

Bench : Division Bench

Advocate : Rohit Arya, for the Appellant; L.L. Sharma, for the Respondent

Judgement

This Judgment has been overruled by : Commissioner of Income Tax, Bhopal Vs. Ralson Industries Ltd., AIR 2007 SC 668 : (2007) 207 CTR 201 : (2007) 214 ELT 166 : (2007) 288 ITR 322 : (2007) 1 JT 356 : (2007) 1 SCALE 44 : (2007) 2 SCC 326 : (2007) 1 SCR 53 : (2007) 7 STR 497 : (2007) 1 UJ 69

Dipak Misra, J.—This is an application u/s 256(2) of the Income Tax Act, 1961 (for brevity "the Act"), by the Revenue. The assessee-company filed its return on December 31, 1992, declaring its income to Rs. 26,66,355 for the assessment year 1992-93. The Assessing Officer completed the assessment on March 10, 1995, u/s 143(3) of the Act at a total income of Rs. 35,40,414. The Commissioner of Income Tax considered the above assessment as erroneous and prejudicial to the interests of the Revenue inasmuch as the Assessing Officer did not exclude certain accounts, transport receipts amounting to a sum of Rs. 27,62,982 and interest amounting to Rs. 1,41,878 as the income from the assessee's total income for the purpose of allowing deduction under Sections 80HH and 80I of the Act. The said authority invoked the jurisdiction vested in him u/s 263 of the Act and set aside the assessment order with the directions to the Assessing Officer to make a fresh assessment.

2. Being aggrieved by the aforesaid order passed by the Commissioner of

Income Tax, the assessee preferred an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal"). It was canvassed before the Tribunal that after passing of the assessment order u/s 143(3) of the Act the Assessing Officer had issued a notice u/s 154 of the Act on October 26, 1995, to which the assessee had furnished a detailed reply and thereafter the Assessing Officer had passed an order u/s 154 of the Act on August 23, 1996, in which no modification on the point of excess deduction under Sections 80HH and 80I on account of non-exclusion of transport receipts and interest from the total income was made although the Assessing Officer had modified the assessment order on other points.

3. The Tribunal placed reliance on the decision rendered in the case of Commissioner of Income Tax Vs. Vippy Solvex Products Pvt. Ltd., and held that the Commissioner of Income Tax lacked jurisdiction u/s 263 to modify the assessment order after the rectification order was passed u/s 154 of the Act by the Assessing Officer inasmuch as the assessment order which was passed on the earlier occasion on March 10, 1995, ceased to exist. Quite apart from the above, the Tribunal expressed the view that the order passed u/s 154 of the Act was passed by the Assessing Officer on due consideration of the explanation of the assessee for the proposed rectification on the point of excess deduction under Sections 80HH and 80I.

4. After the order of the Tribunal by which the appeal preferred by the assessee was allowed the application forming the subject-matter of R. A. No. 49/Ind of 1998 was filed by the Revenue for referring the following questions to this court for its opinion :

"1. Whether, on the facts and in the circumstances of the case, the hon''ble Income Tax Appellate Tribunal was justified in law in holding that the Commissioner of Income Tax lacked jurisdiction to revise the order of assessment u/s 263 of the Income Tax Act ?

2. Whether, on the facts and in the circumstances of the case, the hon''ble Income Tax Appellate Tribunal was justified in holding that the issue of excess deduction under Sections 80HH and 80I contained in the order u/s 143(3) was merged with the order u/s 154 particularly when no rectification u/s 154 was made in this regard ?

3. Whether the view taken by the hon''ble Income Tax Appellate Tribunal that the Assessing Officer did not consider the issue of excess deductions under Sections 80HH and 80I for rectification in his order u/s 154 after due application of his mind, could in law justify its conclusion that there was no jurisdiction u/s 263 in respect of the said issue in terms of the assessment order dated March 10, 1995 ?"

5. On a perusal of the questions referred and the finding that the assessment order dated March 10, 1995, had ceased to be in existence because of its rectification u/s 154 of the Act on August 23, 1996, which was passed by the

Assessing Officer after due application of his mind and on consideration of the explanation on the proposed rectification on the point of excess deduction under Sections 80HH and 80I of the Act and in that backdrop on the earlier occasion the Tribunal had recorded the finding that the Commissioner lacked jurisdiction to revise the assessment order which was not available for revision on the relevant date. In this background the Tribunal came to the conclusion that the findings recorded by the Tribunal on the earlier occasion in appeal were arrived at on appreciation of the evidence available on record and, therefore, the questions which were proposed to be referred were not questions of law. To arrive at the said conclusion the Tribunal placed reliance on the decision rendered in the case of Commissioner of Income Tax Vs. Vippy Solvex Products Pvt. Ltd., .

6. We have heard Mr. Rohit Arya, learned senior counsel for the appellant, and Mr. L.L. Sharma, learned counsel for the assessee. It is submitted by Mr. Arya that the Tribunal has erred by not taking into consideration Section 263(1)(c) of the Act and hence, refusal by the Tribunal to refer the questions of law to this court is absolutely erroneous.

7. Mr. Sharma, learned counsel appearing for the respondent, per contra, has contended that after the order of assessment was passed by the Assessing Officer Section 154 of the Act was in vogue in rectification of the mistake and after such an order came into force the doctrine of merger would come into play and, therefore, there cannot be invocation of power u/s 263 of the Act in respect of the order which is not in existence. To buttress his submission he has placed reliance on the decisions rendered in the case of Chunnilal Onkarmal Pvt. Ltd. Vs. Commissioner of Income Tax, and Commissioner of Income Tax Vs. Vippy Solvex Products Pvt. Ltd., .

8. To appreciate the aforesaid submission, it is relevant to reproduce Section 263(1)(c) of the Act. The said provision reads as under :

"263(1)(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject-matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal."

9. It is not disputed that the revision proceeding was initiated after the rectification. In the case of Chunnilal Onkarmal Pvt. Ltd. Vs. Commissioner of Income Tax, a Division Bench of this court held as under (page 236) :

"In view of the aforesaid admitted position of the facts, we find that the Tribunal was not justified in holding that the Commissioner of Income Tax had jurisdiction to initiate the proceedings u/s 263 of the Act and to revise the original assessment order when such an order was not in existence at the time of initiation of the proceedings. Consequently, we have no option but to answer the question in the negative, i.e., in favour of the assessee and against the Department. However, law and justice are not distant neighbours. We, therefore,

deem it proper to part with this case with the observation that as the order of rectification is no longer in existence, the appropriate authority shall be at liberty to resort to appropriate proceedings with reference to the order dated March 30, 1982, if otherwise not forbidden under the law."

10. In view of the aforesaid premises, we are of the considered opinion, that no substantial questions of law really arise for directing the Tribunal to refer the questions to this court.

11. Accordingly, the application filed by the Revenue stands rejected.