
(2009) 10 MAD CK 0313

In the Madras High Court

Case No : Tax Case (Appeal) No. 534 of 2009

Commissioner of Income Tax

APPELLANT

Vs

Soora Subramanian

RESPONDENT

Date of Decision : 19-10-2009

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 143(3), 154, 158BC

Citation : (2010) 230 CTR 92

Hon'ble Judges : M.M. Sundresh, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : K. Subramaniam, for N. Muralikumaran, for the Appellant;

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The order of the Tribunal dt. 8th Nov., 2005 made in IT(SS)A No. 228/Mad/2003 on the file of the Tribunal, "D" Bench, Chennai relating to the period 1st April, 1985 to 9th Nov., 1995 is put in issue in this appeal by the Revenue by formulating the following questions of law:

1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the losses of the asst. yr. 1995-96 claimed in the belated return had to be set off against the undisclosed income for the block assessment period 1st April, 1985 to 9th Nov., 1995?

2. Whether in the facts and circumstances of the case, the losses that are not permitted to be carried forward on account of delayed filing of return, can be treated as undisclosed and set off against undisclosed income under Chapter XIV-B of the Act?

3. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the wrong allowance of set off of losses cannot be rectified u/s 154?

2. The facts as culled out from the statement of facts recorded in the memorandum of grounds are as follows:

(1) The AO by rectifying the proceedings u/s 154 rectifying the order u/s 143(3) r/w Section 158BC disallowed the long-term capital loss and short-term capital loss amounting to Rs. 4,70,407, which was set off against the capital gains of Rs. 4,79,625. The block period involved in this case was 1st April, 1985 to 9th Nov., 1995.

(ii) Aggrieved by the said order, the assessee preferred an appeal to the CIT(A), who by following the Tribunal's decision in the case of N. Venkatesan in IT(SS)A No. 209 of 1997 dt. 15th Dec, 2000, allowed the appeal. The CIT(A) held that the issue of set off of losses cannot be dealt with in rectification proceedings u/s 154.

(iii) Aggrieved by the order of the CIT(A), the Revenue carried the matter on further appeal to the Tribunal. The Tribunal, following the very same decision, which has been taken note of by the CIT(A) has dismissed the appeal.

(iv) The correctness of the same is put in issue in this appeal by formulating the questions of law as stated above.

3. We have heard Mr. K. Subramaniam, learned standing Counsel appearing for the Department.

4. On the reading of the order of the Tribunal, it is clear that the solitary issue raised before it was relating to the question as to whether set off of capital issue (sic-loss) from sale of shares against the long-term capital gain, can be rectified by invoking the provisions of Section 154 of the IT Act, 1961?

5. It is well-settled that the provision of Section 154 can be invoked only in order to rectify the inadvertent mistake, which is apparent on the face of the record and not in a debatable issue. The CIT(A) as well as the Tribunal have followed the order passed by the Tribunal in Venkatesan's case (supra) wherein also the question as to whether Section 154 can be invoked for correcting the mistake of the present nature has been considered and held in favour of the assessee.

6. From the order of the Tribunal, the first two questions of law do not arise for consideration. As far as the third question of law is concerned, it is relevant to point out the decision rendered by this Court in Tax Case (Appeal) No. 96 of 2004, dt. 27th Aug., 2007, wherein it is held as follows:

7. ...The exposition of law by the Supreme Court does not make an error as one apparent from the record for the authority to assume jurisdiction u/s 154. An apparent error must be one which is glaring, obvious or self-evident mistake. The debatable issue cannot be a ground for invoking jurisdiction u/s 154. It is not denied that there are provisions under the Act, which permit the Revenue to take up and keep alive assessments even on debatable issues which are awaiting decisions before Court of law. An issue, which required a long process of reasoning and where there are already conflicting views, cannot offer a platform for a resort to Section 154 proceedings. In similar circumstances, in a decision reported in Commissioner of Income Tax Vs. Nonmag Wires Pvt. Ltd., to which

one of us is a party (Chitra Venkataraman, J.), this Court held that a debatable issue on a point of law is not a mistake apparent from the record. Placing reliance on the decision of the apex Court reported in T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, , this Court held that "a mistake apparent on the record within the meaning of Section 154 of the Act must be, "obvious" and "patent" and not something which could be established by a long drawn process of reasoning of issues on points on which there may be more than one reason. A decision on a debatable point of law certainly is not a mistake apparent from the record".

8. An impression formed on the scope of the provisions could not be a mistake or an error apparent from the record so as to justify the exercise of jurisdiction u/s 154. The invoking of the provisions of Section 154 presupposes a mistake or an error which is patent or obvious and does not involve a long drawn process of reasoning on a point which is already a debatable issue. Considering the fact that the decision of this Court was available much later to the proceedings u/s 143(1) (a), we do not find any error in the order of the Tribunal to set aside the rectification proceedings.

7. Following the same, the third question of law is held against the Revenue to the effect that Section 154 can be invoked for rectification of mistake which is apparent on the face of the record and it cannot be invoked in respect of the issue which is debatable in nature or for an issue which requires long-term process of law. Useful reference can be had to the judgment of the Supreme Court in the case of T.S. Balaram, ITO v. Volkart Bros. and Ors. (1971) 82 ITR 50 (SC) wherein it is held that a debatable issue could not be made a subject-matter for taking recourse to Section 154.

8. In view of the above, the tax case appeal is dismissed.