
(2001) 07 RAJ CK 0003

In the Rajasthan High Court

Case No : IT Appeal No. 3 of 2000 2 July 2001 & Income Tax Appeal No. 3 of 2000

Commissioner of Income Tax

APPELLANT

Vs

S.S. Gupta

RESPONDENT

Date of Decision : 02-07-2001

Acts Referred:

Income Tax Act, 1961 — Section 154

Citation : (2002) 1 RLW 645 : (2001) 119 TAXMAN 626

Hon'ble Judges : Rajesh Balia, J;H.R. Panwar, J

Bench : Full Bench

Advocate : Sandeep Bhandawat, for the Revenue and Bilam Chand, for the Assessee, for the Appellant;

Judgement

Heard the learned counsels for the parties.

2. In this appeal, the petitioner challenges the order passed by the Tribunal, Jaipur Bench, Jaipur, on Miscellaneous Application No. 17 (Jp) of 1999 made by the assessee in respect of common judgment delivered in ITA No. 2062 to 2066 (Jp) of 1996 relating to the assessment years 1983-84 to 1987-88.

3. The respondent- assessee is an independent assessee in the status of an "individual". He was also a partner in 7 firms named in the impugned order. Amongst other issues the Tribunal held that the 7 firms in which the respondent- assessee was a partner were benami for the assessee and the assessee to be the real owner of such firms. On this finding, the income of the 7 firms for the 5 assessment years in question was clubbed with the income of the assessee as an individual.

4. The appellate order of the Tribunal was passed on 23-2-1999. In recording the aforesaid findings, the Tribunal has primarily relied on a letter dated 11-1-1999 received from the assessing officer, through which it was informed that in the assessments relating to the firms, the firms were held to be not genuine but

benami of the assessee and the income of the firms was, accordingly, clubbed in the hands of S.S. Gupta for the assessment years up to the assessment years 1983-84 to 1987-88, the firms have been assessed at nil income.

5. In the course of arguments, during hearing of appeal the assessee had urged that the assessments of the firms were pending. However, in view of the aforesaid letter dated 11-1-1998, the Tribunal reached the conclusion that the firms have already been assessed at nil income and after considering all other facts of the case the Tribunal held that finding of the assessing authority that the assessee S.S. Gupta is the real owner of all other firms and the firms are benami of S.S. Gupta was justified.

6. After making of the order, the miscellaneous application was moved by the assessee bringing out to the notice of the Tribunal that the hearing of the appeals were completed on 7-1-1999 and the letter dated 11-1-1999, which is after the appeals were heard, was never disclosed to the petitioner. It was contended by the petitioner during the course of hearing of the miscellaneous application that till date, no assessment has been made in the case of firm.

7. Therefore, according to the assessee, the Tribunal has relied on information contained in a document which came into existence after hearing was completed without disclosing the same to the assessee and taking note of same facts which did not exist, namely, about the completion of the assessment of the firms at nil. About these aspects of the matter the learned Departmental Representative appearing before the Tribunal had agreed that the letter dated 11-1-1997 was received after hearing was completed and that letter was filed after hearing was completed as per the requirement of the Tribunal but while furnishing letter to the Tribunal copy thereof was not furnished to the counsel of the assessee and no opportunity was given to the assessee to explain the facts mentioned in letter of assessing officer. He also agreed that so far as the question of clubbing the income of the firms with the income the assessee is concerned the same may be recalled and may be decided again after seeing the records.

8. It is in the aforesaid facts and circumstances and rival submissions made by the respective representative of the assessee and the revenue and the concession made by the Departmental Representative, the Tribunal recalled its order on the point of clubbing and directed the appeals to be placed for hearing in due course.

9. The learned counsel for the revenue has urged that a substantial question of law arises in the present case that whether in the facts and circumstances of the case, the Tribunal was justified in recalling its earlier order passed on 23-2-1999 by taking a different view on the same set of facts.

10. As the order speaks for itself and about the facts stated in the order as stated above there is no dispute about correctness of such facts, the answer is self-evident that mistake was apparent on the face of record inasmuch as a finding of fact against the assessee has been reached on the basis of material

which was conveyed to the Tribunal after hearing was over, and, thus, the Tribunal inadvertently took into consideration such information which was never disclosed to the assessee without affording any opportunity to him to explain the information transmitted to the Tribunal without notice to the assessee which apparently vitiated the order founded on such information. Taking into account such material for basing its findings which was never made part of record, amounts to a mistake apparent from record, which is fatal to sustain the order, this mistake is obvious from record.

11. Once the conclusion is reached that there exist a mistake apparent on the face of record, the Tribunal has necessary power to rectify its order and for eliminating such mistake the only order which the Tribunal could have passed was the one which it has passed, namely, recalling its order and, consequently, placing the appeals and rehearing on the subject of clubbing.

12. In this connection we may usefully refer to a Bench decision of the Bombay High Court in Blue Star Engineering Co. (Bombay) (P.) Ltd. Vs. Commissioner of Income Tax, Bombay City, wherein the court said :

"... u/s 154, the power to rectify the error must extend to the elimination of the error even though the error may be such as to go to the root of order and its elimination may result in the whole order falling to the ground."

13. We, accordingly, find no merit in this appeal. The appeal is dismissed.