(2007) 01 P&H CK 0109

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax — APPELLANT

Vs

Sunder Dass Setia — RESPONDENT

Date of Decision : 17-01-2007

Acts Referred:
Income Tax Act, 1961 — Section 154, 80J

Citation : (2007) 291 ITR 480

Hon'ble Judges : Rajesh Bindal, J;M.M. Kumar, J

Bench : Division Bench

Judgement

Rajesh Bindal, J.—The following questions of law have been referred for the opinion of this court arising out of the order passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, "the Tribunal") in I.T.A. No. 647/Chandi/79 dated December 20, 1980, in respect of the assessment year 1974-75:

1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the mistake of not calculating the capital as on the first day of the previous year, when the assessment order was passed for the purpose of computation of deduction admissible u/s 80J, is not a mistake apparent from record which can be rectified by the Income Tax Officer u/s 154 ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the issue of computation of capital employed as on the first day of the previous year for the purpose of computation of relief u/s 80J is a contentious one in which there can be two opinions and, therefore, there is no mistake apparent from record rectifiable by the Income Tax Officer ?

3. In any case, whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in setting aside the Income Tax Officer''s order u/s 154 considering particularly the provisions of Section 80J(1A) inserted by the Finance (No. 2) Act, 1980 with retrospective effect from April 1,

1972 ?

2. Briefly, the facts of the case are that the assessee filed its return of income which was assessed vide order dated December 31, 1976. While framing the assessment, the deduction u/s 80J of the Act was allowed to the tune of Rs. 54,827. Noticing that there was some error in the calculation of deduction, notice u/s 154 of the Income Tax Act, 1961 (for short, "the Act") was issued and the amount of benefit was reduced to Rs. 30,918 vide order dated May 6, 1978. This rectification was carried out in spite of objection raised by the assessee that the issue as on that date was debatable and two views were possible, accordingly, the rectification was not possible. In appeal, the Commissioner of Income Tax (Appeals) for short, "the CIT(A)" upheld the order passed in rectification. However, before the Tribunal, the assessee succeeded where the Tribunal found that the contention of the assessee that the issue, as on the date of passing of rectification order, was debatable.

3. Counsel for the Revenue was unable to point out any error in the view taken by the Tribunal wherein it is held that the issue as on date was debatable and when two views on the same issue were available, the order of assessment cannot be held to be suffering from error or mistake apparent from record and, accordingly, the jurisdiction u/s 154 of the Act could not be exercised. Endorsing the view taken by the Tribunal, we answer the question referred against the Revenue and in favour of the assessee.

4. The reference is disposed of accordingly.

