
(1991) 03 AP CK 0024

In the Andhra Pradesh High Court

Case No : Case Referred No. 352 of 1982

Commissioner of Income Tax

APPELLANT

Vs

T.N. Viswanatha Reddy

RESPONDENT

Date of Decision : 05-03-1991

Acts Referred:

Income Tax Act, 1961 — Section 143, 154, 207, 208, 209

Citation : (1991) 98 CTR 49 : (1991) 190 ITR 266

Hon'ble Judges : P. Venkatarama Reddi, J;A. Lakshman Rao, J

Bench : Division Bench

Advocate : S.R. Ashok, for the Appellant; Y. Ratnakar, for the Respondent

Judgement

P. Venkatarama Reddi, J.—This is a reference at the instance of the Revenue. The following question of law has been referred by the Income Tax Appellate Tribunal for the decision of this court :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that the Income Tax Officer was not within his jurisdiction in invoking his powers u/s 154 of the Income Tax Act, 1961 ?"

While passing the assessment order dated April 14, 1975, for the assessment year 1973-74, the Income Tax Officer allowed interest to the assessee purportedly u/s 214 of the Income Tax Act on the amount of Rs. 1,76,000 treating the same as advance tax paid during the said year. Out of the amount of Rs. 1,76,000, Rs. 1,43,000 was paid by the assessee on March 21, 1974, i.e., beyond the due dates prescribed u/s 211 of the Income Tax Act. Later on, the assessing authority felt that there was an obvious mistake in law in the assessment order in so far as the interest u/s 214 was allowed despite the fact that the advance tax was paid after the due date prescribed. A show cause notice was issued proposing to rectify the mistake apparent from the record to which the assessee objected through his letter dated October 16, 1978. The objection

taken by the assessee was that there was no apparent mistake inasmuch as the issue involved the "interpretation of the provisions of the Act" regarding which there was scope for debate. The Income Tax Officer overruled the objection and passed the order of rectification u/s 154 on March 20, 1979, disallowing the interest on the sum of Rs. 1,43,000. In coming to the conclusion that there was an obvious mistake of law, the Income Tax Officer relied upon the decision of this court in Kangundi Industrial Works (P.) Ltd. Vs. Income Tax Officer, A-Ward, , which was decided on March 6, 1979, i.e., a few days prior to the rectification order. The Commissioner of Income Tax (Appeals) affirmed the order of the Income Tax Officer holding that, in the light of the decision of this court in Kangundi Industrial Works (P.) Ltd. Vs. Income Tax Officer, A-Ward, , which was binding on the Income Tax Officer, the grant of interest u/s 214 can be said to be the result of an obvious error. On further appeal, the Income Tax Appellate Tribunal reversed the orders of the lower authorities. The Tribunal held that the Income Tax Officer was not within his jurisdiction in invoking his powers u/s 154. The Tribunal took the view that the matter was debatable, more especially because two High Courts had by then taken different views in the matter. The Tribunal, therefore, gave relief to the assessee. That is how this reference has come up before us.

2. Section 154 of the Income Tax Act, 1961, corresponding to section 35 of the Indian Income Tax Act, 1922, empowers the Income Tax authority to amend any order passed by it under the provisions of the Act or to amend any intimation sent under sub-section (1) of section 143 or to enhance or reduce the amount of refund granted under that sub-section "with a view to rectifying any mistake apparent from the record."

3. The crucial phrase "mistake apparent from the record" has been interpreted by the Supreme Court in more than one decision. Suffice it to advert to the decision in T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, , the Supreme Court observed (p. 53) :

"It was not open to the Income Tax Officer to go into the true scope of the relevant provisions of the Act in a proceeding u/s 154 of the Income Tax Act, 1961. A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions."

Learned standing counsel for the Income Tax Department, Sri S. R. Ashok, has vehemently urged before us that, in regard to the question of admissibility of interest u/s 214 on the belated advance tax payments, the legal position admits of no doubt and that, in any case, having regard to the judgment of this court in Kangundi Industrial Works (P.) Ltd. Vs. Income Tax Officer, A-Ward, , the assessment order dated April 14, 1975, can be said to have been vitiated by a mistake apparent from the record. He submits that the fact that the decision of this court came to be rendered subsequent to the assessment order was of no consequence because, the judgment of this court merely declares the law and

the law so declared must be deemed to be the correct law even on the date of passing the assessment order. Learned standing counsel points out that the Tribunal is not justified in referring to the decision of some other High Court, viz., the Gujarat High Court in *Bharat Textile Works and Others Vs. Income Tax Officer Circle-IV, 3-A, (Company), Ahmedabad and Others*, , decided on February 22, 1978, in order to say that the issue was a debatable one.

4. On the other hand, it is contended by learned counsel for the respondent-assessee, Sri Y. Ratnakar, that there is neither a mistake in the assessment order nor is the mistake, if any, a patent or obvious mistake. To support his contention that the subsequent decisions do not afford justification for invoking the powers u/s 154, learned counsel cited certain decisions of the Calcutta and Madhya Pradesh High Courts. Mr. Ratnakar has also referred to the following proviso introduced in section 211 of the Income Tax Act with effect from April 1, 1988, and says that the said proviso being clarificatory in nature, shall be given effect to from the very inception of the Act :

"Provided that any amount paid by way of advance tax on or before March 31, shall also be treated as advance tax paid during the financial year ending on that day for all the purposes of this Act."

We will first address ourselves to the question whether there is scope for controversy or debate in regard to the interpretation of section 214 of the Income Tax Act. The relevant words of section 214 are :

"(1) The Central Government shall pay simple interest at twelve per cent. per annum on the amount by which the aggregate sum of any instalments of advance tax paid during any financial year in which they are payable under sections 207 - 213 exceeds the amount of the assessed tax, from April 1 next following the said financial year to the date of regular assessment..."

Section 211(1) sets out the time schedule for the payment of advance tax instalments. In *Kangundi Industrial Works (P.) Ltd. Vs. Income Tax Officer, A-Ward*, , this court took the view that unless the instalments have been paid before the due dates fixed for payment, the assessee forfeits the right to claim interest u/s 214. In that context, the Division Bench referred to section 218 of the Act and observed that, if the instalment of advance tax was not paid by the specified date, the assessee shall be deemed to be in default in respect of such instalment and becomes liable to pay penalty. The other view is based upon the plain and literal interpretation of the section. On such an interpretation, it is possible to say that it would be sufficient compliance with section 214 if the advance tax is paid during the financial year though such payment is strictly not in accordance with section 211 of the Act. The latter view has been taken by a long line of decisions of several High Courts in *Bharat Textile Works and Others Vs. Income Tax Officer Circle-IV, 3-A, (Company), Ahmedabad and Others*, ; *Chandrakant Damodardas Vs. Income Tax Officer Ward, "A" (Company), Rajkot*, ; *Santha S. Shenoy, A.S. Suresh, A.S. Sasidhara Shenoy, A.S. Narayana Shenoy*,

Sobhana V. Shenoy, A.V. Gopalakrishna Shenoy and A. Sethumadhavan Vs. Union of India (UOI) and Others, ; Commissioner of Income Tax Vs. Jagannath Narayan Kutumbik Trust, and Commissioner of Income Tax Vs. T.T. Investments and Trades Pvt. Ltd., . Briefly stated, it was held in these decisions that advance tax paid during the relevant year, though not on the specified dates, does not cease to bear the character of advance tax and that the section did not advisedly use the words "instalments of advance tax paid in accordance with sections 207 - 213." It was also held that, for the purpose of section 214, it is immaterial whether the assessee is a defaulter u/s 218 and becomes liable for penalty by reason of failure to pay the advance tax on the due date.

5. As things now stand, the judgment of this court in Kangundi Industrial Works (P.) Ltd. Vs. Income Tax Officer, A-Ward, stands aloof from the company of a host of other decisions of various High Courts. Faced with this situation, when a similar issue regarding the scope of section 214 came up for consideration, a Division Bench of this court had referred the issue for consideration by a Full Bench. (Vide reference order dated March 10, 1988 in R.C. No. 124 of 1985). The long array of decisions referred to above bear ample testimony to the controversy and debatable nature of the issue. In this context, it would be appropriate to make mention of the decision of this court in Commissioner of Income Tax Vs. P. Ramagouda Satyam Reddy and Co., . In that case, the question was whether the advance tax paid beyond the due date but within the relevant year could be deducted from the tax payable for the purpose of calculating the penalty u/s 271(1)(a). The measure of penalty is "2% of the assessed tax for every month during which the default continued." The term "assessed tax" has been defined in the Explanation to section 271(1)(a) which reads :

"Explanation. - In this clause "assessed tax" means tax as reduced by the sum, if any, deducted at source under Chapter XVIIB or paid in advance under Chapter XVIIC."

The contention of the Revenue was that the amount paid by the assessee towards advance tax not having been paid on the prescribed date, is not "advance tax" within the meaning of the Act and cannot, therefore, be deducted as contemplated by the Explanation. This contention was repelled by the Division Bench. The Division Bench held (headnote) :

"It would not be reasonable to say that any instalment of advance tax not paid on or before the prescribed date but paid after the due date but during the relevant financial year shall not be treated as advance tax and shall not be deducted as contemplated by the aforesaid Explanation."

It may be noted that in that case, the learned judges were interpreting almost similar words, viz., "paid in advance under Chapter XVIIC" occurring in section 214, though the question arose in a different context. It may not be out of place to mention that in tune with the view taken by most of the High Courts,

Parliament has introduced the proviso to section 211 with effect from April 1, 1988, which has been extracted supra.

6. In view of the aforesaid discussion, we are unable to agree with learned standing counsel that section 214 admits of only one view that was taken by this court in *Kangundi Industrial Works (P.) Ltd. Vs. Income Tax Officer, A-Ward*, and that there could be no genuine doubt regarding the scope and interpretation of section 214. It is not possible to say that the Income Tax Officer, while passing the assessment order dated April 14, 1975, had fallen into a manifest or patent error in allowing interest u/s 214. Even at the stage when the Income Tax Officer clutched at his jurisdiction u/s 154 by issuing a show cause notice proposing rectification, it could not be said that there was a patent mistake vitiating the assessment order. In fact, at that stage, he was confronted with the decision of the Gujarat High Court in *Bharat Textile Works and Others Vs. Income Tax Officer Circle-IV, 3-A, (Company), Ahmedabad and Others*, which took the view that interest could be legitimately allowed in respect of advance tax payments made within the financial year though belatedly.

7. The question then is whether with the pronouncement of the decision of this court in *Kangundi Industrial Works (P.) Ltd. Vs. Income Tax Officer, A-Ward*, which the Income Tax Officer had followed, the issue ceased to be controversial or debatable. Our answer is in the negative. We have already adverted to the decisions of various High Courts both prior and subsequent the judgment of this court taking a view different from that of this court. We have also referred to the fact that, in view of the catena of decisions, this court prima facie felt that the matter required reconsideration and hence referred the same to the Full Bench (Vide reference order dated March 10, 1988, in R.C. No. 124 of 1985). There is no decision of the highest court of the land on the subject. Thus, the legal position had been and still remains in a nebulous state. We have already made a reference to another judgment of this court in *Commissioner of Income Tax Vs. P. Ramagouda Satyam Reddy and Co.*, which had struck a different note while interpreting more or less similar language employed in the Explanation to section 271(1)(a). This casts a further cloud on the correctness of the decisions of this court in *Kangundi Industrial Works (P.) Ltd. Vs. Income Tax Officer, A-Ward*. A definite view of this court is yet to be crystallised and the legal position regarding interpretation of section 214 is far from certain. Parliament, in introducing the proviso to section 211 with effect from April 1, 1988, acted in tune with the preponderant judicial opinion in preference to the view expressed by this court. Having regard to all these circumstances, we are of the undoubted view that the controversy regarding the interpretation of section 214 has not yet been given a quietus and the issue cannot be said to be undebatable or non-controversial. In this state of things, we are unable to hold that the assessment order has been vitiated by a patent or glaring error which could be removed by resorting to section 154 of the Income Tax Act. It is true that the decision of this court in *Kangundi Industrial Works (P.) Ltd. Vs. Income Tax Officer, A-Ward*, still holds the field and, in that sense, the decision binds the Income Tax authorities in the

State of Andhra Pradesh. Until and unless the decision in Kangundi Industrial Works (P.) Ltd. Vs. Income Tax Officer, A-Ward, is reversed, it is no doubt true that the Income Tax authorities will have to act in line with that decision while making the assessments in future or in revising or reopening the past assessments. It does not, however, mean that a mistake apparent from the record can be perceived from the assessment order in question irrespective of the dimension of controversy in the context of the background set out above. In reaching this conclusion, we have no doubt taken into consideration certain subsequent events that have occurred during the pendency of the appeal and reference proceedings. But we do not see any objection for doing so. In fact, in almost all the decisions cited by learned standing counsel and certain other decisions which seemingly support his argument, the events occurring after the order u/s 154 were taken into account. (Vide Parshuram Potterv Works Co. Ltd. Vs. D.R. Trivedi, Wealth Tax Officer, Morvi and Another, and Bhagwandas Kevaldas Vs. N.D. Mehrotra and Another, .

8. As already noticed, learned standing counsel contended that the decision of this court in Kangundi Industrial Works (P.) Ltd. Vs. Income Tax Officer, A-Ward, , though subsequent to the assessment order, exposes the patent error permeating the assessment order and, therefore, the Income Tax Officer was well within his authority in rectifying the assessment order based upon a binding decision of this court. He develops his argument by saying that a judicial decision does not make the law but it only declares the existing legal position and, therefore, its effect dates back to the day of passing the assessment order. In support of this line of argument, he has cited the decisions of the Gauhati High Court in COMMISSIONER OF INCOME TAX, ASSAM. Vs. ASSAM AUTOMOBILE AND ACCESSORIES AGENCY., , of the Punjab and Haryana High Court in CIT v. Mohan Lal Kansal (1978) 114 ITR 583, of the Allahabad High Court in Devendra Prakash Vs. Income Tax Officer, and of the Bombay High Court in Walchand Nagar Industries Ltd. Vs. V.S. Gaitonde, Income Tax Officer, Companies Circle 1(3), Bombay and Another, . As against these decisions, learned counsel for the assessee, Sri Ratnakar, has cited the judgments of the Calcutta High Court in V.R. Sonti Vs. Commissioner of Income Tax, and Jiyajeerao Cotton Mills Ltd. Vs. Income Tax Officer, "C" Ward and Others, and of the Madhya Pradesh High Court in Commissioner of Income Tax Vs. Jagannath Narayan Kutumbik Trust, . We do not think that the decisions cited by learned standing counsel are of much relevance in the context of the facts of the present case. In none of these cases, were the circumstances adverted to by us to emphasise the persistence of the controversy present. In some of the cases, the principle canvassed for the learned standing counsel was not finally decided. We, therefore, refrain from going into the details of these cases and offering our comments. We would, however, refer to the decision of the Supreme Court in S.A.L. Narayana Row, Commissioner of Income Tax, Bombay City, and Another Vs. Model Mills Nagpur Ltd., . In that case, the Income Tax Officer levied an additional tax on the excess dividend declared by the assessee-company. After that decision, the Bombay

High Court held that the levy of tax on the excess dividend was illegal. In the light of that decision, the assessee-company applied to the Income Tax Officer for refund of the tax paid. The request not having been acceded to by the Income Tax Officer, the assessee moved the Commissioner. The Commissioner rejected the application, holding that, considered as an application for cancellation of the levy of tax, it was barred; and as an application against refusal of rectification, it was not maintainable, since the error was not apparent from the record. The writ petition filed against the Commissioner's order was allowed by the Bombay High Court. The Commissioner appealed to the Supreme Court. The Supreme Court held that, in view of the judgment of the High Court declaring the levy of additional tax illegal, the request of the assessee for refund of the tax should have been complied with. The Supreme Court, therefore, dismissed the appeal filed by the Commissioner. In that case, the only question considered was whether where, in the absence of a specific application for rectification of the error apparent from the record, the assessee's application could be granted u/s 35. The Supreme Court held that the application was one in which a request for rectification of the order was implicit. The Supreme Court proceeded on the basis that there was an error apparent from the record in the light of the decision of the High Court declaring the levy of additional tax on the excess dividend illegal. The facts and circumstances of the case with which we are concerned and the issue which we are called upon to decide, are entirely different.

9. It is interesting to note that in Commissioner of Income Tax Vs. Jagannath Narayan Kutumbik Trust, , the Revenue itself contended before the Madhya Pradesh High Court that the assessee's entitlement to interest u/s 214 was a controversial and debatable issue and the power u/s 154 could not be invoked. The assessee contended otherwise. The roles have been reversed in the instant case.

10. The Allahabad High Court in Bhauram Jawahirmal Vs. Commissioner of Income Tax, , while negating the contention that the mistake revealed in an order of assessment on the basis of a judgment of the High Court rendered subsequently will, under no circumstances, constitute a mistake apparent from the record, made a pertinent observation that it would be difficult to lay down the circumstances under which a mistake discovered in an assessment order on the basis of a subsequent judgment of the High Court would be a mistake apparent on the record. Mr. Ashok, learned standing counsel, then relies upon the well-known judgment of the Supreme Court in M.K. Venkatachalam, I.T.O. and Another Vs. Bombay Dyeing and Mfg. Co., Ltd., and contends that the principle is the same, whether it is a case of retrospective legislation or subsequent judicial pronouncement. The Supreme Court held in that case that though the order of the Income Tax officer was proper and valid when it was made, it was plainly inconsistent with the provision which was introduced later with retrospective effect and, in the light of such retrospective provision, the order of assessment could be rectified u/s 35 of the Indian Income Tax Act,

1922, so as to be in conformity with the newly introduced provision. We do not think that the analogy between a retrospective legislation and a judicial decision of the High Court is quite appropriate. The view taken and the interpretation placed by the High Court may change or may be reversed by a superior court. But it is not so in the case of retrospective legislation which must be deemed to be in existence fictionally on the relevant date of passing the order.

11. In view of the foregoing discussion, we endorse the view taken by the Income Tax Appellate Tribunal and answer the question referred to us in the affirmative, that is to say, in favour of the assessee and against the Revenue.

12. The reference is answered accordingly. No costs.