

(1998) 02 MAD CK 0133

In the Madras High Court

Case No : Tax Case No. 1302 of 1985 (Reference No. 808 of 1985)

Dr. Rajah Sir M.A. Muthiah Chettiar (Decd.) (by legal
representative Dr. M.A.M. Ramaswamy)

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 24-02-1998

Acts Referred:

Income Tax Act, 1961 — Section 147, 254(2), 57

Citation : (1999) 156 CTR 318 : (1998) 238 ITR 505

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : N. Srinivasan, for the Appellant; C.V. Rajan, for the Respondent

Judgement

R. Jayasimha Babu, J.—At the instance of the assesses, the following questions have been referred to us for our decision :

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in rejecting the miscellaneous application filed by the applicant for rectification of the order u/s 154 of the Income Tax Act ?

2. Whether, on the facts and in the circumstances of the case, the income tax Appellate Tribunal is right in holding that the decision of the Supreme Court in Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, , could not be followed in view of the earlier decision of the Supreme Court in R.K. Malhotra, ITO, Group Circle II(1), Ahmedabad Vs. Kasturbhai Lalbhai (Huf), ? "

3. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is justified in holding that rectification of their earlier order dated July 9, 1979, following the decision of the Supreme Court in Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, , would have the effect of escapement of taxation and hence their order could not be rectified ?"

2. The assessment year is 1972-73. The assessee had claimed deduction Of the foreign exchange entitlement certificate charges paid in Ceylon from the interest earned in that country. While computing the income assessable to tax, that manner of computation was initially accepted by the Income Tax Officer, Subsequently, the assessment was reopened u/s 147(b) of the Income Tax Act, 1961, on the ground that the expenditure incurred in Ceylon by way of tax was not an expenditure which was incurred for the purpose of earning interest in that country and. hence was not an admissible deduction u/s 57(iii) of the Act. Accordingly, the Income Tax Officer, disallowed a sum of Rs. 14,490. The assessee's appeal to the Appellate Assistant Commissioner was unsuccessful, and so also his further appeal to the Tribunal. The Tribunal passed its order on the assessee's appeal on July 5, 1979. In that order, the Tribunal rejected the assessee's contention that the assessment could not have been reopened on the basis of the audit party's note that the allowance of the expenditure in question was incorrect. The Tribunal referred to and relied on the decisions of the Supreme Court in the case of (1976) 102 ITR 287 (SC) and in R.K. Malhotra, ITO, Group Circle II(1), Ahmedabad Vs. Kasturbhai Lalbhai (Huf), .

3. The law laid down by the Supreme Court in the case of (1976) 102 ITR 287 (SC) , was modified by the Supreme Court in its subsequent decision in the case of Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, . That decision was rendered within a period of four years from the date of the order of the Tribunal in the assessee's case. The assessee approached the Tribunal once again with an application for rectification which was filed on April 15, 1983. The Tribunal rejected that application on the ground that the law which it had applied at the time it made the order on the appeal was the law which then prevailed, and was binding on it and then the subsequent decision of the Supreme Court in the case of Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, , holding that the audit party could not interpret the law for the Assessing Officer but could only draw his attention to the law would not, therefore, affect the order that had already been made by the Tribunal. That order not being one which could be regarded as erroneous as on the date it was made, could not be rectified in the light of the subsequent ruling of the Supreme Court.

4. This view of the Tribunal is called into question by the assessee. Learned counsel for the assessee placed strong reliance on the decision of the Gujarat High Court in the case of Parshuram Pottery Works Co. Ltd. Vs. D.R. Trivedi, Wealth Tax Officer, Morvi and Another, , wherein it was held that if the later decision were not before the Assessing Officer and the material bearing on the question whether the assessment order discloses any mistake apparent from the record the later decisions must be regarded as having merely stated what the law must always be understood to have been.

5. Counsel, therefore, contended that the Tribunal ought to have allowed the application for rectification of its order and allowed the assessee's appeal

notwithstanding the fact that the deduction claimed by the assessee was in fact contrary to the terms of Section 57(iii) of the Act.

6. Learned counsel for the Revenue, on the other hand, placed reliance on the decision of this court in an unreported judgment in Tax Case, No. 934 of 1983, decided on September 18, 1997--since reported in *Sree Palaniappa Transports Vs. Commissioner of Income Tax*, wherein it was held that on a bare reading of Section 254(2), the court had no hesitation in coming to the conclusion that the Tribunal deciding a case on certain debatable issues, could not be deemed to have made a mistake because subsequent to the decision of the Tribunal a judgment has been rendered by the jurisdictional High Court. Counsel submitted that the Tribunal had rightly declined to entertain the application for rectification of mistake as there was in fact no mistake in the earlier order which needed rectification that order having been made in conformity with the law declared by the Supreme Court as on the date.

7. Rectification should be of a mistake in the original order. The mistake can, occur on account of omission to notice relevant facts or stating facts wrongly or omitting to take into account the law or applying the law in a manner contrary to the binding decision of the Supreme Court. Section 254(2) advisedly uses the word, "may". It confers a discretion on the Tribunal in the matter of rectifying what it may find to be a mistake in its order. The primary consideration should be the justice of the case. If an assessee had failed to challenge an order made by the Tribunal because it was in accordance with the decision of the Supreme Court then holding the: field and within a period of four years the Supreme Court modified its view and the modified view becomes the law of the land, under Article 141, justice would require that when a party who had not preferred appeal and sought to continue proceedings in the belief that such proceedings would be futile, such a person is not to be penalised by denying to that person an opportunity to have the order to be rectified by the Tribunal itself. In case where the Tribunal is satisfied that the law declared by the Supreme Court with regard to the matters dealt with in the order which the Tribunal had been called upon to examine had been altered as for or prior to the date of the original order it would be open to the Tribunal to exercise its jurisdiction u/s 254(2) of the Act. Though the section merely refers to rectification of a mistakes the nature of the mistake and the purpose for which the jurisdiction is invoked can also be regarded as relevant factors for the purpose of deciding the question as to whether the application is required to be allowed or refused. If the result of allowing the. application is to bring about a result which is manifestly unjust or contrary to the substantive provision of the Act, the Tribunal can in its discretion, decline to allow such an"application for rectification of mistake. If, on the other hand, by allowing such an application, the Tribunal brings about the result which would be in accordance with the substantive charging provisions of the Act, such an exercise will have to be regarded as one which is a permissible exercise of power to rectify the mistake u/s 254(2) of the Act.

8. The decision relied upon by counsel for the Revenue rests on the availability of the decision rendered by the jurisdictional High Court at the point of time subsequent to the original decision. The decision of the High Court does not have the same effect as the decision of the Supreme Court which under Article 141 of the Constitution is the law of the land, while a decision of the High Court may be subjected to further appeal, and it is not uncommon that there is disagreement among the High Courts on the same point, the effect of the decision of the Supreme Court is to settle the law on the point on which the decision is rendered by it and that law binds all authorities all over the country. The law as interpreted by the court is the law as it always has been, unless declared by that court to have only of prospective effect. In cases where the pronouncement of the Supreme Court subsequent to the original decision of the Tribunal on the effect of the application of the law is brought to the notice of the Tribunal by way of an application for rectification, and if the Tribunal is of the view that, interests of justice would require such an application be allowed, it would be open to the Tribunal to do so. u/s 254(2), the assessee has not been given a right to insist upon the Tribunal to exercise its power under that section. A discretion is given to the Tribunal which no doubt is a judicial discretion and which must be exercised in accordance with the settled principles.

9. In this case, the original order of assessment was clearly not in accordance with Section 57(iii) of the Act and the deduction to which the assessee was not entitled had been allowed. The effect of the reopening and the order made on the reassessment was in accordance with the provisions of the Act. The Tribunal had upheld the order of reassessment. If the effect of allowing the application for rectification of the Tribunal's order is to bring about the result which would not be in conformity with the requirements of Section 57(iii) of the Act, the Tribunal, under the circumstances, cannot be held to have committed any error by declining to entertain the application for rectification of mistake in its own order.

10. Our answer to the questions referred to us, therefore, is (i) that on the facts of this case, the Tribunal was right in rejecting the miscellaneous application filed by the assessee for rectification of the order u/s 254(2) of the Act ; (ii) that the Tribunal was not right in holding that the later decision of the Supreme Court could not be followed in view of the earlier decision of the Supreme Court in the case of R.K. Malhotra, ITO, Group Circle II(1), Ahmedabad Vs. Kasturbhai Lalbhai (Huf), , but we make it clear that though the Tribunal had the discretion to allow the application on account of the later decision of the Supreme Court, in this case, it did not commit any error in declining to do so, as the ultimate result would be clearly unjust and not in accordance with the substantive provision of the Act ; and (iii) that the Tribunal was right in holding that the rectification of the earlier order would have the effect of escapement of taxation and, therefore, the order need not be rectified.

11. The Revenue shall be entitled to costs of sum of Rs. 750.