

(2003) 03 KAR CK 0101

In the Karnataka High Court

Case No : Writ Petition No. 32209 of 1999 27 March 2003

D.S. Srinivas

APPELLANT

Vs

ITO

RESPONDENT

Date of Decision : 27-03-2003

Acts Referred:

Income Tax Act, 1961 — Section 143 (3), 154, 37

Citation : (2003) 129 TAXMAN 657

Hon'ble Judges : R. Gururajan, J

Bench : Division Bench

Advocate : S. Parthasarathi, for the Assessee Indrakumar, for the Revenue, for the Appellant;

Judgement

1. Petitioner in this petition is challenging an order passed by the Commissioner Annexure-G dated 12-3-1999.

2. Petitioner assessee filed his returns for the assessment year 1994-95 declaring the income at Rs. 41,550. He claimed depreciation on motor vehicle in terms of section 32(1) of the Act. It was accepted. Even in the regular assessment after verification of the books of account, statement and other particulars filed by the petitioner, the claim was allowed in terms of the order dated 17-4-1995. Thereafter a notice u/s 154 was issued by the first respondent proposing to rectify the assessment made u/s 143(3) of the Act in respect of depreciation. Objections were filed. Thereafter an order was passed withdrawing the depreciation granted to the petitioner. A representation was filed and the petitioner was unsuccessful in filing the representation. An order in terms of Annexure-G was passed. Annexure-G is challenged in this petition.

3. Sri Sarangan, learned senior counsel appearing for the petitioner would say that the jurisdiction in terms of section 154 is available to correct a mistake and not for reassessing the entire case as has been done in the case on hand. Petitioner says that after verification depreciation was accepted and the same is being withdrawn on the ground of a mistake in terms of section 154 which

according to the petitioner is not available to the department. Petitioner finds fault with both the orders impugned in the writ petition.

4. Per contra, learned standing counsel for the department would say that no specific plea as such has been taken in the case on hand. Therefore he wants the petition to be dismissed.

5. Section 154 provides for rectification of mistakes committed by an officer in terms of the Act. Material facts in this case would show that depreciation was accepted in terms of Annexure-A. Thereafter printed notice was issued and in the printed notice it was stated that excess depreciation is withdrawn. Petitioner filed objections stating therein that the respondent is to refrain from making any allowance in regard to depreciation claimed by the petitioner. Thereafter a notice was issued in terms of Annexure-D stating there in that the petitioner being a hirer is not liable to claim depreciation. The Income Tax Officer thereafter passed an adverse order on the ground that there were mistakes apparent from the records. The revisional authority accepted the said finding. Let me see as to whether the discretion exercised by the respondent is correct or not in the given set of facts.

6. From a reading of the notice it is clear that the respondents are trying to rectify a mistake u/s 154. The same was objected to. The Income Tax Officer says that there were mistakes apparent on the face of the record. The revision filed was also rejected. A combined reading of this material would show that it is not an absolute lack of pleadings, but a case of "some pleadings". The argument of Sri Indra Kumar, learned counsel that there are no pleadings as such, cannot be accepted in the light of the order u/s 154 being based on mistakes apparent on the face of the record. The revisional authority without noticing as to whether there were mistakes apparent on the face of the record or not in terms of section 154 has chosen to pass orders against the petitioner. In these circumstances, I am of the view that both the authorities have committed an error in passing the impugned orders on the ground of a "non-available" mistake. Allowing of depreciation after verification of books of account cannot be equated to a "mistake" in terms of a statute (section 154), as has been done in the case on hand. Mistake has been explained by courts in the following judgments.

(a) T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay,

(b) Commissioner of Income Tax Vs. South India Bank Ltd.,

In the first case, in Volkart Bros." case (supra) Supreme Court has ruled that a mistake found on the face of the record must be a obvious and patent mistake and not something which can be established by a long drawn process of reasoning of points on which there may be conceivable two opinions. A decision on a debatable point of law is not a mistake apparent from the record.

In the second case, in South India Bank Ltd."s case (supra) the Supreme Court

has held that, in view of the difference of opinion among the judges of the High Court on the merits, there was a debatable question on the merits, and there was no error apparent from the record which could be corrected by the assessing officer by invoking the provisions of section 154.

A Division Bench of the Mysore High Court in *M.D. Narayan v. Agricultural Income Tax Officer* (1974) 95 ITR 452 has set aside rectification order in same or similar situation. The Division Bench has ruled that two views were possible on the question of ownership and such a case was not a matter involving an error apparent on the record which could be rectified u/s 37 of the Act. In the case on hand, in the guise of a mistake they are trying to set aside one view of the assessing authority. In these circumstances and in the light of the decided cases, I am satisfied that section 154 is not available to the authorities.

7. In the result, both the impugned orders are set aside. Writ petition is allowed. Parties are to bear their respective cost.