

(1980) 04 AHC CK 0056

In the Allahabad High Court

Case No : Civil Miscellaneous Application in Income Tax Reference No. 387 of 1977

In Re: Lakshmi Industries and Cold Storage Company (P) Ltd.

Date of Decision : 15-04-1980

Acts Referred:

Income Tax Act, 1961 — Section 256

Citation : (1980) 124 ITR 828 : (1981) 5 TAXMAN 87

Hon'ble Judges : R.R. Rastogi, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : S.P. Gupta, for the Appellant; R.K. Gulati, for the Respondent

Final Decision : Allowed

Judgement

C.S.P. Singh, J.—This is an application for recalling our order dated 18th October, 1979 Addl. Commissioner of Income Tax Vs. Lakshmi Industries and Cold Storage Co., by which we had answered the reference made at the instance of the Commissioner in favour of the Commissioner. It appears that by an oversight, the office had not shown the name of Sri S. P. Gupta as counsel for the assessee, as a result of which none appeared for the assessee, and the hearing took place ex parte. The application for recalling the order has been made on the ground that the assessee should not be made to suffer on account of the mistake committed by the office of the court, viz., by the name of counsel for the assessee not being shown in the cause list as a result of which the assessee could not be heard in the matter.

2. It appears to us to be well established that every court and Tribunal has inherent power to correct a mistake committed by it which has resulted in injustice to a party. (See Sub-divisional Officer, Mirzapur Vs. Raja Sri Niwas Prasad Singh, . In the present case, the assessee was deprived of its right of hearing on account of the mistake committed by the office of the court. This being so, the court can, in the exercise of its inherent jurisdiction, recall that order. Sri R. K. Gulati, appearing on behalf of the department, contended that the order cannot be recalled in this case, for the reason that it has been passed

on merits, and further that the jurisdiction which this court exercises is an advisory one, and once such advice has been given on a question of law referred to it, it cannot withdraw its opinion. It was also suggested that the Tribunal may have disposed of the appeal in conformity with the opinion given by this court, and the opinion given cannot be withdrawn on this consideration too. These contentions are unsound. The fact that the court's jurisdiction u/s 256 is advisory in nature, does not deprive it of its judicial character. It is incumbent on the court to give an opportunity of hearing to the opposite party, and if it does not do so, the order is vitiated, and becomes non est in the eye of law. Breach of the principle of natural justice results in an order which is a nullity whether it is passed by an administrative tribunal, judicial authority or a quasi-judicial authority, this principle is being of universal application irrespective of the nature and character of the jurisdiction exercised by a tribunal or court. The earlier order being a nullity for want of notice to the opposite party, the order of the Tribunal, if any, passed in pursuance of it would also crumble, for once the basis on which it has been passed goes it cannot continue. Mr. Gulati drew our attention to the decision in the case of (1940) 8 ITR 412 , where the view had been taken that the court cannot review its decision given in a reference u/s 66 of the Indian I.T. Act, 1922. The order that we are passing is not an order reviewing our earlier order, but one recognising the infirmity in that order, and correcting the mistake committed by this court, in deciding the case without notice to the opposite party. The application is accordingly allowed, and the order dated 18th October, 1979 is recalled. The reference should now be listed for hearing before the appropriate Bench. There shall be no order as to costs.