

**(1997) 03 MAD CK 0138**

**In the Madras High Court**

**Case No : Tax Case No's. 2161 to 2164 of 1984**

India Forge and Drop Stampings Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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**Date of Decision : 20-03-1997**

**Acts Referred:**

Income Tax Act, 1961 — Section 143, 143(3), 147, 148, 154

**Citation : (1998) 233 ITR 112**

**Hon'ble Judges : N.V. Balasubramanian, J;Abdul Hadi, J**

**Bench : Division Bench**

**Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent**

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## **Judgement**

N.V. Balasubramanian, J.—The assessee is a company. The original assessment for the asst. yr. 1974-75 was completed on 9th March, 1977. The ITO, in the original assessment made, accepted the claim of the assessee for depreciation and extra shift allowance on certain items of machinery including tools. The assessee subsequently filed an application on 29th October, 1980 under s. 154 of the IT Act, 1961 (hereinafter referred to as "the Act"), before the ITO claiming depreciation at a higher rate than that was originally claimed by the assessee and allowed by the ITO in the original assessment. The ITO, however, refused to entertain the application on the ground that there was no apparent mistake in the order of original assessment made on 9th March, 1977, and there was no scope for rectification in terms of s. 154 of the Act. The assessee's appeal before the CIT(A) also failed on the ground that there was no mistake apparent on the records. The Tribunal, on the assessee's appeal also came to the conclusion that there was no patent or apparent mistake in the original order of assessment of the ITO which required rectification under s. 154 of the Act.

2. The facts leading to the assessment for the years 1975-76 and 1976-77 are as under :

The original assessment for the asst. yrs. 1975-76 and 1976-77 were completed

under s. 143(3) of the Act on 28th February, 1978 and 13th September, 1978 respectively. The ITO issued notices to reopen the assessment under s. 148 of the Act on the score that he had information which led him to believe that the income had escaped assessment. The assessee did not file any return for the asst. yr. 1975-76 in response to the notice issued under s. 148 of the Act. The assessee, however, wrote a letter dt. 20th October, 1980 stating that the assessee would be entitled to further relief and therefore, the proceedings initiated under s. 147(b) of the Act may be dropped. For the asst. yr. 1976-77, the assessee filed a return claiming higher depreciation in respect of factory buildings, roads and a machine called, Maxi Press. The ITO in the reassessment under s. 147(b) of the Act withdraw extra shift allowance depreciation to the extent of Rs. 45,211. Similarly, for the asst. yr. 1976-77, the ITO made reassessment under s. 143(3) r/w s. 147(b) of the Act by withdrawing excess depreciation, and extra shift allowance allowed in the original assessment to the extent of Rs. 36,131. The assessee preferred appeals before the CIT(A). The CIT(A) went into the merits of the case and found that the assessee was entitled to higher depreciation and extra shift allowance in respect of certain items of machineries. The CIT(A), on the view that in the reassessment proceedings initiated under s. 147(b) of the Act, the ITO had no power to make an assessment to a lower figure than that was originally computed in the original assessment made under s. 143(3) of the Act deleted the entire addition made by the ITO in the reassessment completed under s. 147(b) of the Act, i.e. Rs. 45,211 for the asst. yr. 1975-76 and Rs. 36,131 for the asst. yr. 1976-77.

3. In so far as the asst. yr. 1976-77 is concerned, the assessee, apart from filing a revised return in response to the notice under s. 148 of the Act, filed a separate application under s. 154 of the Act on 31st October, 1980 requesting the ITO to rectify the assessment after allowing the depreciation and extra shift allowance than that was allowed in the assessment originally completed under s. 143(3) of the Act. The ITO for the reason stated in the order refusing to rectify the mistake for the asst. yr. 1974-75 held that there was no mistake apparent in the records which could be rectified in terms of s. 154 of the Act. The CIT(A) also agreed with the view of the ITO that there was no mistake apparent in the records and hence, the ITO was justified in not entertaining the assessee's application under s. 154 of the Act. The Tribunal, in the assessee's appeal, in so far as the refusal to rectify the mistake for 1976-77 is concerned, held that there was no apparent mistake in the original order of assessment of the ITO which required rectification in terms of s. 154 of the Act, and therefore, the assessee's appeal for rectification of mistakes under s. 154 of the Act was rejected. In so far as the claim of the assessee that once the assessment is reopened, the entire assessment is set aside and the assessee can make a claim for the deduction which was neither claimed nor allowed in the original order of assessment is concerned, the Tribunal held that the CIT(A) was justified in his view that the assessee was not entitled to claim in the reassessment proceedings higher depreciation and extra shift allowance so as to reduce the total income in the

reassessment than that was determined in the original order of assessment computed under s. 143 of the Act. The net result of the order of the Tribunal is that for the asst. yrs. 1975-76 and 1976-77, the Tribunal held that it was not open to the assessee to claim in the reassessment proceedings, a deduction which was not claimed in the original assessment proceedings and it is impermissible to reduce the total income to a figure lower than the figure that was determined in the original order of assessment. In so far as the asst. yr. 1974-75 and 1976-77 are concerned, the Tribunal did not agree with the view of the assessee that there were certain mistakes apparent in the records in the original order of assessment which could be rectified under s. 154 of the Act. The combined order of the Tribunal is the subject-matter of the tax case references and at the instance of the assessee, the Tribunal has referred the following questions of law for our consideration :

"1. Whether, on the facts and in the circumstances of the case, the higher rate of depreciation to which the assessee was entitled and not allowed in the original assessment proceedings could yet be granted in the reassessment proceedings even if it would lead to determination of the total income at a figure less than that determined in the original assessment ?

2. Whether the assessee is entitled to the same relief under s. 154 in respect of the asst. yrs. 1974-75 to 1976-77 ?"

4. Though in the second question referred by the Tribunal, it is stated that the second question is for the asst. yrs. 1974-75 to 1976-77, the order of the Tribunal shows that the Tribunal considered the appeals of the assessee for two asst. yrs. viz. 1974-75 and 1976-77. Hence, the reference to asst. yr. 1975-76 in the second question is apparently a mistake and the question is confined to two asst. yrs. 1974-75 and 1976-77.

5. In so far as the first question is concerned, the question involved is whether is it open to the assessee to claim deduction in the reassessment proceedings which was neither claimed nor allowed in the original assessment and against which the assessee did not file any appeal ? In other words, is it permissible for the ITO to make an assessment de novo in the reassessment to reduce the income lower than that was determined in the original order of assessment ? The answer to the above question is self-evident that the reassessment proceedings are initiated for the benefit of the Revenue, and it is not open to the assessee to claim certain deductions which were neither claimed nor allowed in the assessment, and it is impermissible to the assessee to claim certain deductions in the reassessment proceedings which would reduce the total income that may be computed in the reassessment proceedings to a figure lower than that was determined in the order of original assessment. The position is well settled by a decision of the Supreme Court in the case of Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., wherein the Supreme Court held that in reassessment proceedings, it is not open to the assessee to seek a review of concluded items unconnected with the escapement of income for the purpose of

computation of the income escaping assessment. Following the said decision of the Supreme Court, we are of the view that the Tribunal has come to a correct conclusion that the assessee is not entitled to deduction which was not claimed in the original assessment in the reassessment proceedings and the income for the purposes of reassessment cannot be reduced beyond the income originally assessed. Accordingly, we answer the first question of law referred to us in the affirmative and against the assessee.

6. In so far, as the second question is concerned, as already seen, it relates to the asst. yrs. 1974-75 and 1976-77. We have already set out the facts leading to the rectification proceedings in detail. However, it is necessary to notice certain facts for answering the question whether there was any mistake apparent from the record.

7. The ITO, as already seen, in so far as the asst. yrs. 1974-75 and 1976-77 are concerned, rejected the petition filed by the assessee under s. 154 of the Act claiming enhanced depreciation in respect of factory buildings, roads and certain machineries on the ground that there was no mistake apparent on the records. The CIT(A) as well as the Tribunal has also taken the same view on the ground that there was no mistake apparent from the records and the relief under s. 154 of the Act cannot be granted as one has to look afresh as to the nature of each machine and plant used by the assessee. It is, however, relevant to notice, when the CIT(A) considered the appeal preferred against the order of reassessment under s. 147(b) of the Act, held that for the asst. yr. 1974-75, the assessee's claim for higher rate of depreciation and extra shift allowance is not a mistake apparent from the records. But, the CIT(A) also found that the assessee claimed depreciation on the roads at 15 per cent and the depreciation on the roads was not originally granted and in so far as other machinery, viz., Maxi Press is concerned, there was no discussion on the merits of the case. For the asst. yr. 1975-76, in the appeal preferred against the reassessment, the CIT(A) went into the matter in detail and he found that the view of the ITO that the assessee was entitled to 10 per cent depreciation was erroneous. Similarly, for the asst. yr. 1976-77, he found that the view of the ITO on merits of the case was not correct, and the assessee was entitled to higher depreciation at the enhanced rate.

However, as already seen, he restricted the relief in the appeal preferred against the order under s. 147(b) of the Act to the addition made in the reassessment. The finding of the CIT(A) is that the assessee was entitled to higher depreciation. After the order of the CIT(A) on merits of the case, which has become final, there is certainly a mistake in the order of the ITO which is apparent from the records. The finding of the CIT(A) has become final. Therefore when the Tribunal took up the matter : on appeal, it was apparent that there were mistakes in the original order of assessment which called for rectification under s. 154 of the Act. The assessee has challenged the finding of the CIT(A) to the effect that there was no mistake apparent from the records. But, when the records disclosed the

same, the Tribunal should have directed the AO to rectify the mistakes.

8. The Supreme Court in *Maharana Mills (Private) Ltd. Vs. Income Tax Officer, Porbandar*, held that the record contemplated by s. 154 of the Act does not mean only the order of assessment, but it comprises all proceedings on : which the assessment order is passed and the ITO is entitled for the purpose of exercising his jurisdiction under s. 154 of the Act to look into the whole evidence and the law applicable to ascertain whether there was an error. The Supreme Court also held that if the ITO discovers that the very basis of the different earlier assessment years is erroneous because of the initial mistake in determining the written down value, it cannot be said that it should not constitute a mistake apparent on the record, and if in order to determine the correct written down value, the ITO makes correct calculations, it cannot be said that he is not rectifying the mistake apparent from the records but is de hors it.

9. In *Salem Provident Fund Society Ltd. Vs. Commissioner of Income Tax, Madras*, this Court has held both ss. 147 and 154 of the Act are mutually exclusive in their operation and in a given case, where statutory requirements are satisfied, the ITO can have recourse to either of the two provisions and it cannot be said that they are overlapping and either of the sections at the choice of the assessing authority would not bar the officer to take recourse to the other provisions of law. They are separate and distinct powers conferred on the authority. Therefore, when the CIT(A) found in the appeal against the reassessment order that there were mistakes in the order of assessment, the mistake noticed by the CIT(A) become apparent from the records.

10. The Supreme Court in *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, held that the ITO is concerned with the assessment and collection of revenue and he has been conferred with a power to rectify the mistake in the order of assessment to ensure that the injustice to the assessee or to the Revenue is avoided and the power conferred on him should be exercised when a mistake apparent from the record is brought to the notice of the ITO by a person concerned with or interested in the proceedings. Applying the principles of law laid down by the Supreme Court, it is clear, the CIT(A) is the person concerned in the proceedings of assessment and when he found that on the merits of the case, the assessee was entitled to claim higher rate of depreciation on the machineries employed by the assessee as well as on the roads, the view of the CIT(A) would show that there were certain mistakes apparent on the facet of the record which called for rectification of such mistakes. Though at the time when the ITO passed the order of rectification, he did not have the benefit of the order of the CIT(A), when the Tribunal heard the matter, it had before it the order of the CIT(A) which established clearly that the assessee was entitled to higher rate of depreciation on some of machineries as well as on roads which was not granted at the time of original assessment. Therefore, the Tribunal, when it heard the appeal, should have considered the order of the CIT(A) on merits of the case, in considering the question whether there was a mistake apparent from

the record or not. Hence, we hold that the order passed by the Tribunal without considering the order of the CIT(A) on merits of the case is not legally sustainable in law.

11. The Supreme Court in *Anchor Pressings (P) Ltd. vs. CIT* (1987) 161 ITR 159 held that the jurisdiction of the ITO under s. 154 of the Act for rectifying a mistake is wider than that was provided under Order 41 r. 1 of the CPC and where there are materials to support the claim of the assessee which are found in the records, the ITO is duty-bound to rectify the mistake. The Supreme Court in the above case held that the obligation imposed on the ITO to grant relief is wider and the relief to the assessee cannot be refused merely because the assessee had omitted to claim the relief. But, where there are materials to show that the relief was available to the assessee, but the ITO has failed to grant the relief, then the Court can compel the officer to grant the relief. This decision also in a way supports the case of the assessee that when there are materials on the facts of the case to establish that there are mistake apparent from records, the assessee is entitled to the relief and once it is established that the assessee is entitled to the relief, the Tribunal should have directed the ITO to rectify the mistakes.

12. This Court in *Additional Commissioner Of Income Tax Madras-I Vs. P. V. S. K. Palaniappa Nadar and Sons.*, was dealing with the case of grant of depreciation which the assessee was entitled to. In that case, this Court held that in each case, it has to be examined whether the assessee would be entitled to depreciation at general rate or at special rate and the nature of the machinery would determine the category to which the assessee's goods fall. This Court also held that where it is a matter which is not likely to involve any debate and relevant details of the machineries were on record, the Tribunal should have looked into the records and found what is the correct rate of depreciation that is applicable to the assessee. This Court, therefore, held that by not determining the question, the Tribunal has acted erroneously and failed to exercise its jurisdiction. Similarly, on the facts of the case, it is seen that on the merits of the case, it is clearly found from the order of the CIT(A) that the assessee is entitled to higher rate of depreciation and the Tribunal should have gone into the records and found whether the assessee is entitled to higher depreciation. Since the order of the CIT(A) on merits has become final, which showed that the assessee is entitled to higher depreciation, the Tribunal should have looked into the records and should have found whether the order requires any order of rectification. Since the Tribunal has not decided the question, we are of the view that the Tribunal has acted erroneously and failed to exercise its jurisdiction conferred upon it. The case on hand is peculiar on the facts. After the order of CIT(A) on merits of the case for the two assessment years, it has become established that there are certain mistakes apparent from record in the original order of assessment. The AO earlier held that there were no mistake apparent from the record. When the Tribunal heard the matter against the orders of reassessment as well as against the order rejecting the request for rectification,

it had before it both the orders, one holding that there are mistakes found in the original order of assessment, and the other holding that there are no mistakes apparent from the records. The Tribunal as the ultimate appellate authority on facts, should have seen that the study of both the orders, juxtaposed to each other, would reveal that there are mistakes apparent in the original order of assessment. The assessee has kept the matter alive by bringing the matter before the Tribunal. We, therefore, hold that when the Tribunal, sitting in appeal over the order of AO and having the privilege of looking into both orders before it, should have directed the AO to rectify the mistake. After the order of the CIT(A), the assessee could not have gone before the AO with a request to rectify the original order of assessment in the light of the findings of the appellate authority because of the finding of the CIT(A). Hence, the only course left open to it was to approach the Tribunal by way of appeal to direct the officer to rectify the mistakes. The assessee had precisely done the same, and a duty was cast upon the Tribunal to find out whether the views of the AO and the CIT(A) were correct. Though the appeals before the Tribunal are independent appeals, the decision on one appeal is inter dependent upon the finding in the other appeal. Therefore we are of the view that the view of the Tribunal that there was no mistake apparent on the face of the records is not sustainable in law. The Tribunal should also go into the question that is the correct and proper rate applicable to the place and machineries in question and direct the officer to rectify the mistake under s. 154 of the Act. Accordingly, we answer the second question referred to us for the asst. yr. 1974-75 and 1976-77 in the affirmative and in favour of the assessee.

13. In the result, we answer the first question in the negative and against the assessee. In so far as the second question is concerned, it relates to the asst. yrs. 1974-75 and 1976-77. We answer the question in the affirmative and in favour of the assessee. The assessee is entitled to the cost of Rs. 500 one set.