

(2003) 04 CAL CK 0048

In the Calcutta High Court

Case No : Writ Petition No's. 5897, 5898 and 5899 of 2002

Netai Chandra Rarhi and Co. and Others, Brindaban Chandra
Das and Satya Narayan Das

APPELLANT

Vs

Income Tax Settlement Commission and Others

RESPONDENT

Date of Decision : 25-04-2003

Acts Referred:

Income Tax Act, 1961 — Section 154, 234A, 234B, 234C, 245D

Citation : (2004) 186 CTR 706 : (2003) 263 ITR 186 : (2003) 133 TAXMAN 640

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : R.N. Bajoria and Debasish Mitra, in W.P. No. 5897 of 2002, J.L. De and D. Mitra, in W.P. No. 5898 of 2002 and J.P. Khaitan and D. Mitra, in W.P. No. 5899 of 2002, for the Appellant; D.K. Shome, J.C. Saha and Nizamuddin, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—In all these applications the same question of law being involved, those were heard analogously.

2. By these writ applications the petitioners have prayed for cancellation of orders dated March 20, 2002, passed by respondent No. 1 thereby allowing an application u/s 154 of the Income Tax Act, 1961 ("the Act"), thereby withdrawing the waiver of interest under Sections 234A, 234B and 234C of the Act which was earlier allowed by the original order u/s 245D(4) of the Act. By the orders impugned, direction for charging interest under Sections 234A, 234B and 234C of the Act has been given.

3. The facts giving rise to filing all these applications may be summarised thus :

(a) Notices u/s 148 of the Act for reassessment of the petitioners for several assessment years having been given, the petitioners filed applications before respondent No. 1 for settlement of their tax liabilities. The final hearing of those

settlement applications before respondent No. 1 took place on November 27, 1997, after the reports were filed by the Department on those applications. After considering all the facts, respondent No. 1 desired that in order to settle the matter, the petitioners should offer some additional amount in their settlement applications and the petitioners agreed to the said proposal of paying further amount over and above the amount already offered in their settlement applications. By orders dated November 27, 1997, respondent No. 1 accepted the additional amount offered and disposed of all the settlement applications filed by the petitioners. In the facts and circumstances of the case, by those orders, respondent No. 1 further directed that in view of the co-operation extended by the petitioners in settlement of their cases, no interest under various sections would be charged.

(b) On March 1/4, 2002, the Commissioner of Income Tax filed an application u/s 154 of the Act for rectification of the orders dated November 27, 1997, on the ground that the Supreme Court, subsequently, in the case of Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, having specifically held that waiver of interest chargeable under Sections 234A, 234B and 234C being not permissible except in cases where granting of relief is authorised by the circulars issued by the Board, the orders dated November 27, 1997, should be rectified for error apparent from record.

(c) On the basis of such applications, notices were issued upon the petitioners to show cause why those orders should not be rectified.

(d) Pursuant to such notices, the petitioners filed objections to the aforesaid applications u/s 154 of the Act contending that the conditions mentioned in Section 154 of the Act were not satisfied in the facts of these cases. It was contended that the question whether any interest under Sections 234A, 234B and 234C of the Act could be levied or not, required investigation into the facts and raised issues which were controversial and debatable. It was further contended that the issue whether any liability for any interest under Sections 234A, 234B and 234C of the Act was attracted or not and if so, to what extent, and whether the cases fell within the circumstances enumerated in the circulars justifying waiver, required detailed investigation of facts and consideration of the submissions and as such, those points could not be decided in an application u/s 154 of the Act.

(e) Ultimately, by the orders impugned herein, respondent No. 1 had turned down objections raised by the petitioners and has allowed the applications u/s 154 mentioned above.

4. Being dissatisfied, the petitioners have raised five-fold submissions before this court.

5. First, it does not appear from the original orders dated November 27, 1997, that respondent No. 1 really waived interest under Sections 234A, 234B and 234C of the Act in exercise of inherent power. By referring to the application u/s

154 of the Act filed by the Commissioner of Income Tax, Mr. Bajoria points out that even in the body of the application, the Commissioner has made the following admission in para. 2 ;

"The Commission has not specified which interest they were waiving but since the assessment years involved are 1989-90 to 1992-93, it is presumed that they are waiving interest chargeable under Sections 234A, 234B and 234C. It seems the Commission has waived such interest by presuming that they have inherent power u/s 245D(6) to waive or reduce interest chargeable under Sections 234A, 234B and 234C of the Income Tax Act, 1961."

6. Mr. Bajoria thus contends that this case cannot be said to be one where there is any mistake apparent from the record.

7. Secondly, Mr. Bajoria contends that on the date of filing of the application for review, the decision of the Supreme Court in the case of Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, was not final as its correctness was doubted by another Bench of the Supreme Court in the case of Commissioner of Income Tax, Bombay Vs. Damani Brothers, , which referred the matter for consideration of a larger Bench. Mr. Bajoria points out that such decision was delivered on February 11, 2002, and thus on the date of filing the applications for rectification, there was some doubt even as to the finality of the decision of the Supreme Court in Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, , Mr. Bajoria thus contends that respondent No. 1 should have rejected the application as it was not a clear case of rectification of mistake on the basis of a settled Supreme Court judgment.

8. Thirdly, Mr. Bajoria contends that even a subsequent contrary decision given in a different case on a question of law cannot be put forward as a ground of rectification of mistake as the question is whether at the time of passing of the original order there was any mistake in the record. In other words, Mr. Bajoria contends that a subsequent decision of a superior court by which existing law has been upset cannot be a ground for rectification.

9. Mr. Bajoria next contends that even if it is assumed for the sake of argument that the subsequent decision of the Supreme Court in the case of Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, should afford a ground of rectification, in such a case, the Commission was required to consider whether the petitioner's cases came within the circulars issued by the Department as the petitioners have made out a definite case that the Commission originally passed the orders waiving interest on the basis of various circulars. Mr. Bajoria submits that from the orders impugned, it would appear that the Commission has not even cared to examine whether by virtue of those notifications the petitioners are entitled to waiver of interest. In the absence of such finding, Mr. Bajoria contends, the orders dated November 27, 1997, could not be set aside.

10. Mr. Bajoria lastly contends that in these cases the Commissioner having

refunded the excess amount to the petitioners and having closed the proceedings by accepting the original orders dated November 27, 1997, it was not open to the Department to apply for rectification u/s 154 of the Act. He thus prays for setting aside the orders impugned in these applications.

11. The aforesaid contentions of the petitioners have been seriously disputed by Mr. Shome, learned counsel for the respondent. According to Mr. Shome, this court sitting in a writ jurisdiction should not entertain the pleas advanced on behalf of the petitioners. Mr. Shome contends that in exercise of jurisdiction under article 226 of the Constitution of India it is not open to the High Court to decide whether the findings recorded by the Settlement Commission on a question of fact or even on a question of law are correct or not. According to him, having regard to the objective underlying the constitution of the Settlement Commission and the nature of function entrusted to and the power of the Commission, the conclusions both on question of fact and law reached by the Commission cannot be clarified except under very limited circumstances. In this connection, he relied upon a Division Bench decision of the Andhra Pradesh High Court in the case of Patel Desai and Co., Secunderabad Vs. Asst. Commissioner of Income Tax Circle-1(2) Hyderabad and others, .

12. Mr. Shome further submits that the scope of an application u/s 154 of the Act is much wider than the provision contained in Order 47 of the Code of Civil Procedure. Mr. Shome contends that the subsequent contrary decision given by a superior court on the question decided by the Commission can afford a ground of rectification of the original order provided such application is filed within the period of limitation. Mr. Shome, in this connection, relied upon the decision of the Madhya Pradesh High Court in the case of NAV NIRMAL P. LTD. Vs. COMMISSIONER OF Income Tax., and that of the Kerala High Court in the case of KIL KOTAGIRI TEA AND COFFEE ESTATES CO. LTD. Vs. Income Tax APPELLATE TRIBUNAL AND OTHERS., . He further relied upon the decision of the Andhra Pradesh High Court in the case of B.V.K. Seshavataram, Bangaru Muralidhar and Bangaru Manikyam Vs. Commissioner of Income Tax, . Lastly, as regards the scope of Section 154 of the Act, he relies upon the decision of the Supreme Court in the case of Anchor Pressings (P) Ltd. Vs. Commissioner of Income Tax, U.P. and Others, .

13. Mr. Shome contends that in the present case, it is apparent from the orders dated November 27, 1997, that the Commission waived interest in favour of the petitioners under Sections 234A, 234B and 234C as if it was satisfied by the conduct of the petitioners and thus, the said power was exercised not on the basis of any notification. Mr. Shome thus contends that the orders impugned justify no interference.

14. Before I proceed to deal with the contentions raised by the parties, it will be appropriate to enquire into the scope of Section 154 of the Act. In the case of T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, , the Supreme Court while considering the scope of Section

154 of the Act held that 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 be conceivably two opinions. The power of the officers mentioned in Section 154, the Supreme Court proceeded, to correct "any mistake apparent from the record" is undoubtedly not more than that of the High Court to entertain a writ application on the basis of "error apparent on the face of the record". In that case the Supreme Court, however, felt that there was no necessity of spelling out the distinction between the expressions "error apparent on the fact of the record" and "mistake apparent from the record". Suffice it to say, the Supreme Court was of the view that the question whether a firm can be considered to be a person as defined in Section 2(9) so as to be governed by Section 17(1) of the Act could not be scrutinised within the narrow scope of Section 154.

15. Keeping in view the aforesaid principle, I now propose to consider whether the Settlement Commission was justified in amending the orders dated November 27, 1997, by invoking Section 154 of the Act.

16. I have already pointed out that in paragraph 2 of the application u/s 154, the Commissioner of Income Tax proceeded on the basis of presumption that the Commission waived interest chargeable under Sections 234A, 234B and 234C of the Act since the assessment years involved were 1989-90 to 1992-93. The application further alleged that the Commission waived such interest by presuming that they had inherent power u/s 245D(6) although in the orders dated November 27, 1997, there was no reference to either Section 234A, 234B or 234C or 245D(6) or exercise of inherent power. Thus for the purpose of understanding the intention of the Commission while giving relief to the petitioners detailed investigation of the entire records is necessary.

17. Secondly, at the time of filing of the application u/s 154, the subsequent decision of the Supreme Court in the case of Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, was doubted by another Bench of the Supreme Court in the case of Commissioner of Income Tax, Bombay Vs. Damani Brothers, . Therefore, on the date of filing of the application in March, 2002, Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, was not final and the matter was referred to a larger Bench. If there were two opinions on a point of law by two separate Benches of the apex court, and the matter was referred to a larger Bench, the matter cannot be called "settled" justifying rectification on the basis of Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, .

18. Over and above, it is the definite case of the assesseees that in these cases, the circulars issued by the Department authorised grant of waiver of interest. Therefore, even if it is assumed that Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, was final, it required detailed investigation with reference to the circulars in the field to find out whether there could be waiver. Moreover, the Commission has not cared to consider those circulars

before charging interest after modifying the earlier orders.

19. I, therefore, hold that these cases did not fall within the narrow limit of Section 154 as pointed out by the Supreme Court in the case of T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, and there was no scope of rectification.

20. Before parting, I, however, hold that although the subsequent contrary decision of a Supreme Court on a question of law does not afford a ground of review within the meaning of Order 47, Rule 1, of the Code of Civil Procedure, such decision is a ground of rectification within the meaning of Section 154 of the Act as held by the Supreme Court in the case of S.A.L. Narayana Row, Commissioner of Income Tax, Bombay City, and Another Vs. Model Mills Nagpur Ltd., . However, in these cases, the decision in Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, was unsettled at the time of filing of the application u/s 154 and as such the respondent was not entitled to rectification on the basis of the judgment in Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, . Within the period of limitation for filing the application u/s 154, viz., March 31, 2002, the larger Bench could not settle the dispute. Thus, if from the date of filing of the application till March 31, 2002, the last day for filing such application, the law remained unsettled, respondent No. 1 could not succeed on the application u/s 154 of the Act.

21. I thus set aside the orders impugned and restore those dated November 27, 1997.

22. The writ applications succeed.

23. There will be, however, no order as to costs.