

(2003) 04 MP CK 0087

In the Madhya Pradesh High Court

Case No : Income-tax Appeal No. 1 of 2003

Prithviraj Chouhan

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 09-04-2003

Acts Referred:

Finance Act, 2001 — Section 254, 254(2)

Income Tax Act, 1961 — Section 143(1), 234A, 234B

Citation : (2004) 267 ITR 450 : (2005) 142 TAXMAN 279

Hon'ble Judges : S.K. Seth, J;Deepak Verma, J

Bench : Division Bench

Advocate : R.T. Thanewala, for the Appellant; R.L. Jain, for the Respondent

Final Decision : Dismissed

Judgement

1. Shri R.T. Thanewala, learned counsel for the appellant, and Shri R.L. Jain, learned counsel for the respondent, on advance copy.

2. Heard on admission. This order shall also govern disposal of (I. T. A. No. 17 of 2003--Prithviraj Chouhan v. CIT ; I. T. A. No. 18 of 2003--Prithviraj Chouhan v. CIT ; I. T. A. No. 19 of 2003--Prithviraj Chouhan v. CIT ; I. T. A. No. 20 of 2003--Rajendra Kumar Chouhan v. CIT ; I. T. A. No. 21 of 2003--Prem Kishore Chouhan v. CIT; I. T. A. No. 22 of 2003--Prem Kishore Chouhan v. CIT and I. T. A. No. 26 of 2003--Prem Kishore Chouhan v. CIT], as they arise out of the common order passed by the Income Tax Appellate Tribunal, Indore Bench.

3. All these appeals have been preferred by the assessee u/s 260A of the Income Tax Act, 1961 (for short "the Act"). The original order by the Tribunal was passed in the appeal preferred by the Revenue. The said order of the Tribunal was based on a judgment of the Supreme Court reported in Commissioner of Income Tax and Others Vs. Ranchi Club Ltd., . The Supreme Court was dealing with the provisions contained in Sections 234A and 234B of the Act. The said judgment was pronounced by the Supreme Court on August 1, 2000. Subsequent to this

judgment, an Explanation 1 has been substituted in Section 234B of the Act with effect from April 1, 1989, by the Finance Act, 2001. The said Explanation has been made effective retrospectively with effect from April 1, 1989. By this Explanation 1 it has been clearly mentioned that the "assessed" tax means the tax on the total income determined under Sub-section (1) of Section 143 or on regular assessment as reduced by the amount of tax deducted or collected at source in accordance with the provisions of Chapter XVII of any income, which is subject to such deduction or collection. So by legal fiction Explanation 1 was made applicable even to those cases, which were decided on and after April 1, 1989. Admittedly, this Explanation 1 substituted with effect from April 1, 1989, in Section 234B escaped the notice of the Tribunal. The same was brought to the notice by the Revenue by filing an application u/s 254(2) of the Act. A notice of the same was issued to the assessee since it was found that it was a mistake apparent from the record, therefore, the same has been rectified and the impugned order has been passed, whereby it has been directed that the appellant would be liable to pay interest on the assessed income. It is this order of the Tribunal passed in the rectification application, which is in challenge before us.

4. After having heard learned counsel for the appellant and after perusal of the record, we find that no substantial question of law is involved in this appeal and the connected appeals. There is no dispute as to the fact that Explanation 1 substituted in Section 234B of the Act was not brought to the notice of the Tribunal or due to oversight it escaped its notice. On bringing this fact to its notice, the Tribunal has rectified its mistake, which according to us was apparent on the face of the record.

5. In a similar factual situation, this court has held in *Commissioner of Income Tax Vs. M.P. Electricity Board*, that when the law is amended with retrospective effect, the fiction is that all must proceed on the basis of law at the relevant time when the law was amended subsequently. That being so, the legal fiction is apparently capable of being carried forward to hold that when the earlier order was passed, it was passed in contravention of the amended law, which by fiction is deemed to be in force at that time. This clearly is an error apparent on the face of the record.

6. In view of the ratio of the aforesaid judgment, we are fortified in our views that the Tribunal was justified in correcting the error apparent on the face of the record. Against such an order, by which the Tribunal has corrected its own mistake, we find that no substantial question of law is involved in this and the connected appeals.

7. In view of the discussion held above, this and the connected appeals are dismissed.