

(1978) 04 AHC CK 0057

In the Allahabad High Court

Case No : Income-tax Reference No. 704 of 1974

Raja Hari Chand Raj Singh

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 18-04-1978

Acts Referred:

Income Tax Act, 1961 — Section 139(1), 154

Citation : (1978) 114 ITR 727

Hon'ble Judges : Satish Chandra, C.J.;C.S.P. Singh, J

Bench : Division Bench

Advocate : V.B. Upadhyaya, for the Appellant; Ashok Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, C.J.—For the assessment years 1962-63 to 1967-68, the assessee filed his return of income on June 25, 1968. For all these years, a consolidated assessment order was passed on March 13, 1969. In the normal course, the assessee received demand notices for each assessment year. The demand notices included certain amounts charged by way of interest for the delay in filing the return. The assessee filed an application for rectification u/s 154 of the Income Tax Act, 1961, on the ground that in the assessment order, there was no indication that the assessee was liable to be charged interest for the delay in filing the return, and consequently the inclusion of any amount under this head in the demand notice was an error apparent from the record, and liable to rectification. The Income Tax Officer, however, repelled the contention and rejected the application. On appeal, it was held that no interest was chargeable. Because the assessee had not applied for extension of time, the Income Tax Officer had no jurisdiction to charge interest. The appeal was allowed. The revenue went up to the Tribunal in appeal. Before the Tribunal, the question whether the assessment order was lacking in a direction to charge interest, and if so, the assessee could invoke the provisions of Section 154 of the Income Tax Act, were argued, but the Tribunal did not think it fit to go into these

questions. In this view the controversy in the case boils down to the question whether the application filed by the assessee u/s 154 of the Act was competent. The question was whether interest was chargeable under the third provision of Section 139(1) in case the assessee had not applied for extension of time. On this point, there was serious difference of opinion between the various High Courts. The Mysore High Court in *Indian Telephone Industries Co-operative Society Ltd. Vs. Income Tax Officer, Special Survey Circle, Bangalore and Another*, and the Madras High Court in *Express Newspapers (P.) Ltd. Vs. Income Tax Officer, Administration and Collection and Another*, held that interest was chargeable. On the other hand, the Andhra Pradesh High Court in *Kishanlal Haricharan Vs. Income Tax Officer, A-Ward* has held that interest is not chargeable. The resultant position was that it was a debatable issue. In view of the decision of the Supreme Court in *T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay*, , that a mistake on an issue which is debatable cannot be said to be an error apparent on the record, the Tribunal held that an application u/s 154 of the Act was rightly rejected. The appeal filed by the revenue was allowed.

2. At the instance of the assessee, the Tribunal has referred the following question of law for our opinion :

"Whether the Appellate Tribunal was, in the facts and circumstances of the case, justified in holding that the matter of charging interest u/s 139(1) did not come within the purview of Section 154, even when there was no specific order to the effect in the assessment order ?"

3. The last clause of the question emphasises the fact that there was no specific order with regard to charging interest in the assessment order. As already seen, the Tribunal declined to decide this point, even though it was argued before it. This aspect is hence not relevant to the question of law referred to us. We, therefore, reframe the question as follows:

"Whether the Appellate Tribunal was, in the facts and circumstances of the case, justified in holding that the matter of charging interest u/s 139(1) did not come within the purview of Section 154 of the Act ?" The question is whether a point of law, on which there may be difference of opinion, can be said to be a point on which if a particular view has been taken by the officer, there is an error apparent from the record. In *T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay*, , the Supreme Court laid down the principle that a mistake apparent on the 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 conceivably be two opinions. The Supreme Court also held that a decision on a debatable point of law is not a mistake apparent from the record. A Division Bench of our own High Court in *Commissioner of Income-tax v. Sit Shadilal Sugar & General Mills* (see page 729 (Appendix) (infra) held that if the construction of a particular provision was not free from doubt, it was not open to the Income Tax Officer to go into the true

scope of the provisions of the Act in a rectification proceeding u/s 154 of the Income Tax Act. This decision is directly applicable. Here, the question was whether, on a true construction of Section 139(1), interest chargeable when an assessee had not applied for extension of time ? On this question, there is a serious difference of opinion between the various High Courts in the country. The question was clearly a debatable one. In view of the principle laid down by our own High Court it cannot be said that there was an error apparent from the record, because the Income Tax Officer charged interest even though the assessee had not applied for extension of time in filing the return.

4. Under the circumstances, we answer the question referred to us in the affirmative, in favour of the department and against the assessee.

5. The Commissioner would be entitled to the costs which are assessed at Rs. 200.