
(2005) 07 P&H CK 0103
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 91 of 2005

Raja Malwinder Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 04-07-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 119, 154, 154(2), 154(7), 254(1)

Citation : (2005) 199 CTR 418 : (2005) 278 ITR 568 : (2005) 141 PLR 572

Hon'ble Judges : D.K. Jain, C.J.; Hemant Gupta, J

Bench : Division Bench

Advocate : S.K. Mukhi, for the Appellant; N.L. Sharda, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Jain, C.J.—By this writ petition under Article 226 of the Constitution, the petitioner-assessee questions the legality of order dated 19.4.2004, passed by the Income Tax Appellate Tribunal, Chandigarh Bench "B" (for short, "the Tribunal"), dismissing the miscellaneous application filed by him u/s 254(2) of the Income Tax Act, 1961 (for short, "the Act"). By the impugned common order, the Tribunal has dismissed various miscellaneous application filed against its order passed in appeals pertaining to the assessment years 1972-73 to 1984-85. The Tribunal has come to the conclusion that all the applications are barred by limitation, having been filed beyond the period of 4 years from the date of the order passed by it on 21.10.1998.

2. Since the issue raised in the present petition namely, whether any time limit is prescribed for filing an application u/s 254(2) of the Act for rectification of mistake in the order passed by the Tribunal, is purely legal, we deem it necessary to state the facts, which led to the filing of appeal before the Tribunal, disposed of vide order dated 21.10.1998. It is however, pertinent to note that before the Tribunal, it was conceded on behalf of the assessee by his authorised representative that as per the provisions contained in Section 254(2) of the Act,

rectification application had to be filed within 4 years of the date of the impugned order. Admittedly, in the present case, the same were filed after the expiry of the said period.

3. Assailing the order, Mr. S.K. Mukhi, learned Counsel appearing for the assessee has strenuously urged that the period of limitation of 4 years, prescribed in Section 254(2) of the Act, does not apply to an application filed by an assessee or the revenue. It is urged that the section has two limbs. The first limb empowers the Tribunal to pass an order of amendment within 4 years from the date of the order, on its own motion, i.e., suo-motu, if there is a mistake apparent from the record, whereas the second limb casts a duty on the Tribunal to carry out a similar amendment if the mistake is brought to its notice by the assessee or the revenue at any time. To buttress the argument, learned Counsel has laid emphasis on "comma", which appears after the expression "Tribunal may". The submission is that these words only suggest the time limit of 4 years in the context of a suo-motu rectification and not otherwise. In other words, according to the learned Counsel, in so far as filing of an application for rectification by the revenue or the assessee is concerned, no time limit is prescribed in the Act. To highlight the significance of a "comma" in a sentence, reliance is placed on a decision of the Supreme Court in *Sama Alana Abdulla Vs. State of Gujarat*, . Learned Counsel has also relied on a circular issued by the Central Board of Direct Taxes (for short, "the Board") u/s 119 of the Act, on 7.1.1972, wherein it has been clarified that in all the cases where a valid application under Clause (b) of Sub-section (2) of Section 154 of the Act had been filed by an assessee within the statutory time limit of four years, but was not disposed of by the authority concerned within the time specified in Sub-section (7) of Section 154 of the Act, it may be disposed of by that authority even after the expiry of the statutory time limit, on merits and in accordance with law. Relying on yet another decision of the Apex Court in *Central Council for Research in The Central Council for Research in Ayurveda and Siddha and Another Vs. Dr. K. Santhakumari*, , learned Counsel would submit that a wrong concession made by a counsel on a question of law is not binding on his client and such concession cannot constitute a just ground for a binding precedent.

4. We are unable to persuade ourselves to agree with the learned Counsel. Section 254(2) of the Act reads as follows:

"(2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under Sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer;

Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this sub-section unless the Appellate Tribunal has given notice to the assessee of its intention to do so and allowed the assessee a reasonable opportunity of being heard.

Provided further that any application filed by the assessee in this sub-section on or after the 1st day of October, 1998, shall be accompanied by a fee of fifty rupees."

5. The section specifically empowers the Tribunal to amend at any time within 4 years from the date of an order, any order passed by it u/s 254(1) of the Act with a view to rectify any mistake apparent from the record either suo-motu or by an application. From a bare reading of the provision, it is clear that the Tribunal is competent to amend any order passed by it under Sub-section (1) within 4 years from the date of the order and not thereafter. In other words, the Tribunal has no jurisdiction to amend any order passed by it under Sub-section (1) after the expiry of 4 years from the date of the order, whether it is on its own volition or on an application being made by the assessee or the Assessing Officer. The provision admits of no other interpretation. If the stand of the petitioner is accepted, it would lead to an anomalous situation, inasmuch as an application for amendment of an order of the Tribunal could be moved till infinity. This is not the intention of the legislature, which has restricted the power of the Tribunal to rectify a mistake "at any time within four years" only.

6. The view we have taken above finds support for a recent decision of the Apex Court in *D. Saibaba Vs. Bar Council of India and Another*, . In the said decision, the Court was called upon to interpret a provision in the Advocates Act, enabling filing of review. The Court speaking through R.C. Lohit, J. (as the Hon'ble Chief Justice of India then was) quoted G.P. Singh's *Principles of Statutory Interpretation* (8th Edition) with approval to the following effect:

"In selecting out of different interpretations the court will adopt that which is just, "reasonable and sensible rather than that which is none of those things", as it may be presumed that the legislature should have used the word in that interpretation which least offends our sense of justice." (P.113, *ibid*).

"The Courts strongly lean against a construction which reduces the statute to a futility. A statute or any enacting provision therein must be so constructed as to make it effective and operative on the principle expressed in the maxim *at res magis valeat quam pereat*."" (p.36, *ibid*).

"If the language used is capable of being more than one construction, in selecting the true meaning regard must be had to the consequences resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results." (pp. 112-13, *ibid*).

7. The above observations are apt in the present context. In discerning the correct interpretation, the purpose for which the provision was brought in namely, to lay down the outer limit, within which the order could be modified, cannot be lost sight of. In our view, the provision of period of limitation u/s

254(2) of the Act cannot be reduced to one of ornamental existence through the interpretative process, as pleaded by learned Counsel for the petitioner.

8. In our opinion, therefore, an application for rectification of mistake in an order passed by the Tribunal has to be filed within 4 years from the date of the order and not at any time. Any other interpretation, in our view, would lead to absurdity and cannot therefore be accepted. The aforementioned circular of the Board is of no avail of the assessee, inasmuch as it only seeks to remove the difficulties, which an assessee or the revenue may face on account of non-disposal of an application for rectification filed within the period of four years. The circular clearly stipulates that the application for rectification u/s 154, *pari materia* to Section 254(2) of the Act has to be filed within the statutory time limit of four years. In fact, the circular also goes to show that the Assessing Officer of the Tribunal, as the case may be, assuming that it was applicable to applications filed u/s 254(2) of the Act, has no jurisdiction to amend the order after the expiry of four years.

9. For the view, we have taken, it is unnecessary to deal with the ingenious argument advanced by learned Counsel for the assessee with regard to the significance of "comma", appearing in the section after the expression "Tribunal may".

10. For the foregoing reasons, the writ petition being devoid of any merit, is dismissed, but with no order as to costs.