
(2004) 08 P&H CK 0042
In the Punjab And Haryana At Chandigarh
Case No : IT Appeal No. 63 of 2004

Sat Pal Singh

APPELLANT

Vs

Assistant Commissioner of Income Tax

RESPONDENT

Date of Decision : 06-08-2004

Acts Referred:

Income Tax Act, 1961 — Section 154, 253, 254(1)

Citation : (2004) 190 CTR 400 : (2005) 274 ITR 172

Hon'ble Judges : N.K. Sud, J; Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : P.C. Jain, for the Appellant; N.L. Sharda, for the Respondent

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the assessee against order of the Tribunal dt. 19th June, 2003.

2. Facts relevant for purposes of this appeal are that assessment for the block period 1st April, 1985 to 23rd Nov., 1995 was completed in the case of assessee on 29th Nov., 1996. Subsequently, the AO noticed that certain additions were required to be made as per the findings recorded in the assessment order which remained omitted while computing the total income. After due notice, the AO rectified the order in June, 1997.

3. The assessee preferred an appeal against the order of rectification. Appeal of the assessee against original order of assessment was already pending which came to be decided on 3rd April, 2000. When the said appeal was heard, neither of the parties brought to the notice of the Tribunal that appeal against order of rectification was pending separately. Thereafter, the appeal against order of rectification was taken up for decision and was dismissed by the impugned order on 7th Nov., 2003, inter alia, with the following observations :

"It means that since this order of the rectification merged with the order of the AO passed u/s 158BC r/w Section 143(3) of the IT Act, so the assessee, if

advised under the law, could have challenged this finding of the fact by the AO during the pendency of the appellate proceedings before the Tribunal in his appeal against the order passed by the AO u/s 158BC r/w Section 143(3) of the IT Act which was ultimately decided by the Tribunal on 3rd April, 2000, supra."

4. Shri P.C. Jain, learned counsel on behalf of the appellant submitted that observations of the Tribunal that the assessee could have challenged the order of rectification during pendency of appellate proceedings against order of assessment, are based on erroneous assumption. The assessee had already challenged the order of rectification during pendency of appellate proceedings against the order of assessment, though this fact could not be brought to the notice of the Tribunal when appeal against the order of original assessment was decided on 3rd April, 2000. He submitted that since the appellant had a statutory remedy against the order of rectification, his remedy could not be taken away by applying the doctrine of merger. The said doctrine could have been invoked if the Tribunal had taken cognisance of order of rectification while deciding the appeal against the original assessment.

5. Dr. N.L. Sharda, learned counsel on behalf of the Revenue supported the view taken by the Tribunal in the impugned order and submitted that remedy of the assessee was to challenge the order of rectification in appeal against original assessment itself and order of rectification will merge with the original order of assessment as held by the Tribunal.

6. We have considered the rival submissions and perused the record.

7. We find merit in the contention raised on behalf of the appellant. The doctrine of merger could not be invoked to deprive the appellant of his remedy against the order of rectification when the said order had not been taken cognisance of by the Tribunal while deciding the appeal against original assessment. In the appeal against original assessment, the assessee had no occasion to challenge the order of rectification which had not been passed till then. No doubt, the assessee could have challenged the order of rectification by filing an application in the pending appeal against original assessment but the assessee also had a remedy of filing a separate appeal against the order of rectification. It would have been better if either party had brought to the notice of the Tribunal that an order of rectification had been passed which had been challenged before the Tribunal so that the Tribunal could have decided both the matters simultaneously. That having not been done, the Tribunal was required to take a decision on the correctness of order of rectification on merits. It is well-settled that doctrine of merger is not a doctrine of rigid and universal application and it cannot be said that wherever there are two orders, one by the inferior authority and the other by the superior authority passed in appeal or revision, there is a fusion or merger of the two orders irrespective of the subject-matter of appellate or revisional order. Application of this doctrine depends on the nature of appellate or revisional order in each case. Reference may be made to the decision of the apex Court in *State of Madras Vs. Madurai Mills Co., Ltd.*, . The said decision has been recently

reiterated in Kunhayammed and Others Vs. State of Kerala and Another, .

8. We are, therefore, of the view that the appellant had a right to be heard on merits in appeal filed against the order of rectification. Accordingly, this appeal is allowed and the order of the Tribunal under appeal is set aside and the matter is remanded to the Tribunal for a fresh decision on merits in accordance with law.