(1998) 07 KAR CK 0143

In the Karnataka High Court

SATISHCHANDRA and CO. V COMMISSIONER OF INCOME TAX

Date of Decision : 24-07-1998

Acts Referred:
Income Tax Act, 1961 — Section 143 (1), 154

Citation : (1999) 153 CTR 375

Hon'ble Judges : S.R. Venkatesha Murthy, J;Ashok Bhan, J

Bench : Full Bench

Judgement

Ashok Bhan , J.

For the assessment years 1979-80, 1980-81 and 1981-82, the Income Tax Appellate Tribunal, Bangalore, hereinafter referred to as "the Tribunal," has referred the following question of law to this court with appropriate statement of case. As the issue involved in the appeals before the Tribunal was the same, the appeals were, for the sake of convenience, consolidated and heard together. One common order was passed in all the appeals. The reference applications were also disposed of by a common order and therefore, this order shall dispose of the reference petitions for all the three years by a common order :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in upholding the order dated 3-12-1985, u/s 154 for the assessment year in question ?"

2. The assessee is an arrack contractor. It has been assessed in the status of unregistered firm. In the assessment for the assessment year 1979-80 completed by the Income Tax Officer, on 15-2-1982, the Income Tax Officer computed income under the head "Business income" at Rs. 2,30,758 and income under the head "Income from other sources" at Rs. 1,07,670. The total of the business income and the income from other sources came to Rs. 3,38,428. For the assessment year 1980-81, the assessment was completed on 28-12-1982. The Income Tax Officer computed income under the head "Income from business" at Rs. 1,33,189 and income under the head "Income from other sources" at Rs. 1,85,103. The total income came to Rs. 3,18,292. Assessment for the assessment year 1981-82 was made on 31-3-1983. The total income was

computed at Rs. 2,99,273 and the income under the head "Income from other sources" at Rs. 1,61,994. For all the three assessment years "the income from other sources", was on account of interest which was earned on the deposits made at the instance of the bank to enable the bank to give bank guarantee for making bids for the contracts.

There was carried forward business loss of Rs. 10,20,700 pertaining to the assessment year 1976-77. The Income Tax Officer set off this carried forward loss and made the assessment for the assessment years 1979-80 and 1980-81 at nil income and the remaining loss of Rs. 3,64,983 against the income of Rs. 4,61,267 for the assessment year 1981-82. In short, the Income Tax Officer set off the loss suffered for the assessment year 1976-77 against the income earned for the years 1979-80, 1980-81 and 1981-82.

Later, notices dated 12-7-1985, u/s 154 were issued by the assessing authority proposing to rectify the assessments by limiting the set off of brought forward losses from earlier years to the income computed under the head "Business" only and to subject to tax the interest income. Objection letters dated 17-7-1985, were filed by the assessee. Overruling the objections, the assessing authority rectified the assessments. According to the Income Tax Officer, a mistake had crept in ,in the order in so far as the carried forward business loss was set off against the income under the head "Income from other sources". According to him, section 72(1) of the Act makes it clear that the carried forward losses of an earlier year can in no case be set off against the profits from a source other than business, profession or vocation. It rectified the mistakes committed in the assessments by passing orders u/s 154 of the Act.

3. Being aggrieved by the order of rectification passed by the Income Tax Officer, the assessee filed an appeal before the Commissioner (Appeals). The argument raised before the first appellate authority was that the deposits which had yielded interest were made at the instance of the bank to enable the bank to give bank guarantee for bidding for the contracts. The deposits were made in the course of the business and as such the interest income arose in the course of the business. It was thus, pointed out that since the interest income was assessable as business income, there was no mistake in the orders of assessment wherein a set off of the carried forward loss had been allowed against interest as well. In the alternative, it was pleaded that in the event two views were possible on the matter of assessability of the interest like, whether it should be assessed as business income or under the head "Income from other sources" was possible, it would not be justified to take recourse to the provisions of section 154 as it could not be said that the setting off of the carried forward loss against interest income was a mistake that was apparent on the face of records. The Commissioner (Appeals) accepted the contention of the assessee and cancelled the order of rectification by holding that for the limited purpose of appeal it was not necessary to give a finding whether interest income in the present case is a business income. By referring to certain decisions of the High Court it was held

that there could be two views on this question, and therefore, under such circumstances, the Income Tax Officer was not justified in resorting to the provisions of section 154.

4. The department carried a further appeal before the Tribunal. The contention of the department before the Tribunal was that the assessee itself had shown interest income under the head "Income from other sources". In the assessments made, interest income had been assessed under the head "Income from other sources". Since interest income had been assessed under the head "Income from other sources" it was an obvious mistake committed on the part of the Income Tax Officer to have set off carried forward business loss against the interest income as well. It was stated that it was a patent mistake of law which was certainly rectifiable u/s 154 of the Act. The assessee raised the same plea which it had raised before the first appellate authority.

The Tribunal was of the view that since the assessee had returned income by way of interest under the head "Income from other sources" there was no scope left for debate on the subject whether interest income was the business income of the assessee. Income by way of interest had also been assessed under the head "Income from other sources". Since the income had been assessed under the head "Income from other sources", it was clear that interest income was not from the business of the assessee. It was ruled that interest income could not constitute business income of the assessee and in such a situation, a glaring and patent mistake had crept in in the order of the Income Tax Officer in giving set off of the carried forward business loss of earlier years against the interest income of the subsequent years. The appeal was accepted and the order of the Income Tax Officer was restored on this point.

5. The only question to be decided is whether in the facts and circumstances of the case, the Income Tax Officer was within his jurisdiction in making the impugned rectification. The purported rectification has been made in exercise of jurisdiction u/s 154 of the Act. The section at the relevant time read as follows :

"154. Rectification of mistake.- With a view to rectifying any mistake apparent from the record an Income Tax authority referred to in section 116 may,-

(a) amend any order passed by it under the provisions of this Act;

(b) amend any intimation sent by it under sub-section (1) of section 143, or enhance or reduce the amount of refund granted by it under that sub-section..."

We have to now see whether the Income Tax Officer was justified in opining that in the original orders of assessment there was only apparent mistake. The admitted case of the parties is that the deposits which yielded interest were made at the instance of the bank to enable the bank to give bank guarantee for the assessee for bidding for the contracts. The deposits were made in the course of the business. Once the deposits are made in the course of business then the interest income would also arise in the course of business. The assessee had shown in his return income by way of interest under the head "Income from other sources" and the Income Tax Officer also assessed the income by way of interest under the head "Income from other sources". Would that be sufficient to conclude that the interest income earned on the deposits made in the bank to get the bank guarantee for making bids in the contracts would be "income from other sources" and not "business income"? Only because the assessee had shown income by way of interest from other sources, that would not disentitle it to urge before the authorities that the income earned by way of interest was a business income as the said income arose in the course of the business. The assessee had to make deposit in the bank as a condition for obtaining bank guarantee to be filed before the excise authorities as required under the Excise Rules. The interest income which arose out of the transaction is closely connected with the business of the assessee and so the interest income was also part of the business income. If the income is assessable as business income, then the mere circumstance that assessee had shown it as "income from other sources" or that it was assessed under the head "Income from other sources", should not be made the ground for denying the set off of the carried forward losses. In any case the assessee could not be precluded from establishing before the authorities that it was a business income. The predominant view of the various High Courts is that interest income arising from the transaction connected with the business would be interest income.

In SNAM PROGETTI S.P.A. Vs. ADDITIONAL COMMISSIONER OF Income Tax, NEW DELHI-II, AND OTHERS., , an Italian company engaged in India in execution of engineering works running into millions of dollars had large liquid funds. These funds were placed in short-term deposits and interest income was earned thereon. For the assessment year 1970-71, it had incurred a net business loss of Rs. 122 lakh and in the next assessment year 1971-72 had earned a profit of Rs. 30 lakh and interest income of about Rs. 5 lakh and the question was whether the business loss for 1970-71 carried forward could be set off against the interest income. A Bench of the Delhi High Court on these facts held that the assessee had not come from Italy to make bank deposits, but had come to India to carry on business and the income earned by it by depositing spare funds in banks and earning interest thereon would also be business income and for the purpose of set off it could not be treated as separate from business income. It was observed (headnote):

"The question to be seen in such a case is whether the interest income is derived also from what may be described as ''business activity''. If it is so derived then the mere fact that it is taxed under a different section will make no difference. The approach to the problem has, therefore, to be disassociated from the section under which the tax is imposed on the form of income."

Similarly, a Bench of the Madras High Court in Commissioner of Income Tax Vs. Madras Refineries Ltd., , held that the deposit made by the assessee in the bank is capital employed, that would become part of the income of the new industrial undertaking. Any income earned by the capital employed would automatically become the business income of the assessee and it could not be treated as income earned from "other sources". It was held that interest income on bank deposits had to be assessed under the head "Business income".

6. The point whether the interest income on these facts would be "business income" or "income from other sources" has not been referred to us and, therefore, we need not opine on it and confine ourselves to the question whether two views were possible on this point. From the judgments referred to above of the Delhi and Madras High Courts possibly a view could be taken that interest income on these facts was business income. It was a debatable point and two opinions were possible. If the point is debatable and can give rise conceptually to two opinions, then it would not be a mistake apparent on the face of the record, authorising the assessing officer to exercise jurisdiction u/s 154 of the Act. It is the consistent opinion of the Supreme Court as well as the various High Courts that the assessing officer would be clothed with jurisdiction u/s 154 only if the mistake is apparent, obvious and patent on the face of the record and not admissible to two opinions. In case the mistake is conceivable of two opinions, then it would not be a mistake apparent on the face of the record. The assessing officer would under those circumstances not have the jurisdiction to rectify the mistake u/s 154 of the Act. The Supreme Court in T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, , summed up this point pithily in the following words (headnote) :

"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. A decision on a debatable point of law is not a mistake apparent from the record."

Since the point was debatable giving rise to the possibility of two views it could not be said to be a mistake apparent on the face of the record and, therefore, the assessing officer was precluded from exercising his jurisdiction u/s 154 of the Act for rectification of the orders passed earlier by him.

7. For the reasons stated, we answer the question referred to us in the negative, i.e., in favour of the assessee and against the department. It is held that the Tribunal was not right in upholding the order of the Income Tax Officer u/s 154 of the Act for the assessment years in question in exercise of his jurisdiction u/s 154 of the Act. No costs.