
(1974) 02 AHC CK 0036
In the Allahabad High Court
Case No : Income-tax Reference No. 851 of 1972

Sharda Prasad

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 07-02-1974

Acts Referred:

Income Tax Act, 1961 — Section 154, 80J, 84

Citation : (1975) 100 ITR 373

Hon'ble Judges : Satish Chandra, J; R.L. Gulati, J

Bench : Division Bench

Advocate : Ashok Gupta, for the Appellant; R.R. Misra, for the Respondent

Final Decision : Allowed

Judgement

Gulati, J.—u/s 256(1) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal, Delhi Bench " C ", has submitted this statement of the case with the following question of law for our opinion :

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the case would not come within the ambit of the provisions of Section 154 of the Act of 1961, with regard to granting of rebate u/s 84 of the Act to the partners of M/s. Kanpur Cold Storage, where relief had been allowed u/s 84 to it. "

2. The assessee was a partner in a firm of the name and style of M/s. Kanpur Cold Storage. By an order dated 27th February, 1965, the Income Tax Officer completed the assessment of the firm and allowed rebate to it u/s 84 of the Act. The assessment of the assessee was completed on 29th March, 1968. The Income Tax Officer did not allow rebate u/s 84 of the Act in respect of the assessee's share in the firm. The assessee subsequently made an application to the Income Tax Officer u/s 154 of the Income Tax Act to the effect that he was entitled to a rebate u/s 84 of the Act in respect of his share in the firm, which had not been allowed and, as such, there was a mistake apparent on the face of

the record, which should be rectified. The Income Tax Officer rejected the application on the ground that the assessee had not made any claim in his return with respect to the rebate and, therefore, there could be no question of rectifying a mistake on the face of the record. When the matter went before the Appellate Assistant Commissioner of Income Tax, it was conceded before him that no claim was made before the Income Tax Officer at the time of assessment with regard to the rebate. The Appellate Assistant Commissioner of Income Tax accordingly affirmed the order passed by the Income Tax Officer. On second appeal before the Income Tax Appellate Tribunal also the assessee did not dispute that no claim had been made by him in the Income Tax return filed by him. The Income Tax Appellate Tribunal accordingly dismissed the assessee's appeal not only on this ground but also on merits by saying that the point raised by the assessee was of a controversial nature and could not be said to be a mistake apparent on the face of the record. At the instance of the assessee, the Tribunal has referred the question of law, noted above, for our opinion.

3. Now, in the form prescribed for the submission of the Income Tax return, there is a column in which the assessee has to make a claim in respect of relief claimed by him u/s 84 of the Act. This column was scored out by the assessee. The position that the assessee had made no claim for rebate u/s 84 of the Act in his return was conceded by him before the Appellate Assistant Commissioner of Income Tax and this position was also not disputed before the Income Tax Appellate Tribunal. In the statement of the case drawn by the Tribunal at the instance of the assessee it has been stated that the assessee in his return of income did not claim the rebate u/s 84 but he claimed rebate in respect of dividend income. On this finding that the assessee did not make a claim for a rebate in his return or otherwise before the Income Tax Officer, it cannot be said that the Income Tax Officer committed any mistake apparent on the face of the record when he did not allow rebate to the assessee. This court has already, in the case of *Anchor Pressings Private Ltd. v. Commissioner of Income Tax*, [1975] 100 ITR 374 taken the view that the relief contemplated u/s 84 can be allowed to an assessee only if a claim is made in that behalf in the return filed by him and in the absence of such a claim if the Income Tax Officer does not allow rebate it cannot be said that there is any mistake apparent on the face of the record which the Income Tax Officer can be asked to rectify later on. In that case also the assessee had not made a claim in the return for rebate u/s 84 and the assessee tried to get the relief subsequently by making an application u/s 154 of the Income Tax Act. This court held that the assessee was not entitled to do so. Following that decision we hold that, on the facts and in the circumstances of the case, Section 154, of the Income Tax Act was not applicable.

4. We, accordingly, answer the question in the affirmative, in favour of the department and against the assessee. The Commissioner of Income Tax is entitled to costs which we assess at Rs. 200.