
(2011) 11 DEL CK 0157

In the Delhi High Court

Case No : Income Tax Appeal No. 349 of 2011

The Commissioner of Income Tax-X

APPELLANT

Vs

Satish Kumar Agarwal

RESPONDENT

Date of Decision : 08-11-2011

Acts Referred:

Constitution of India, 1950 — Article 141

Income Tax Act, 1961 — Section 143, 154, 254(2), 260A, 80HHC

Citation : (2011) 10 AD 265 : (2012) 1 ILR Delhi 355

Hon'ble Judges : Sanjiv Khanna, J; R.V. Easwar, J

Bench : Division Bench

Advocate : Rashmi Chopra, for the Appellant; Bhakti Pasrija, for the Respondent

Final Decision : Allowed

Judgement

R.V. Easwar, J.—This is an appeal filed by the Revenue u/s 260A of the Income Tax Act (for short "the Act") against the order dated 28th May, 2010 passed by the Income Tax Appellate Tribunal (for short "Tribunal"), Delhi Bench "G" in IT Appeal No. 1429/Del/2008 for the assessment year 2002-2003.

2. The respondent/assessee is an individual. He is engaged in the business of export and was accordingly entitled to the deduction u/s 80HHC of the Act. We are concerned with the assessment year 2002-2003. The assessee filed a return of income on 31st October, 2002 claiming deduction under the aforesaid section. An assessment was framed by the Assessing Officer by order dated 31st March, 2004 passed u/s 143(3) of the Act. In this order the Assessing Officer computed and allowed Rs. 2,24,38,491/- as deduction u/s 80HHC.

3. After the completion of the assessment, a notice u/s 154 of the Act was issued by the Assessing Officer proposing to rectify the assessment order on the ground that the deduction allowed in the assessment order was incorrect to the extent of Rs.1,36,92,769/-. One of the grounds on which the Assessing Officer issued the notice u/s 154 of the Act was that the loss suffered by the assessee from the

export of trading goods, amounting to Rs.68,37,193/- ought to have been adjusted against 90% of the export incentives under the proviso to Section 80HHC(3) and the omission to do so in the assessment order passed on 31st March, 2004 was a mistake apparent from the record which needed rectification.

4. The assessee objected to the notice u/s 154 of the Act on the ground that the issue proposed to be rectified was debatable and was not amenable to the jurisdiction conferred u/s 154 of the Act. The assessee also drew the attention of the Assessing Officer to several authorities on the point, which were in his favour. These contentions were however rejected by the Assessing Officer who passed the order u/s 154 of the Act on 1st July, 2005 reducing the deduction u/s 80HHC as per the working given in the said order. In short, the loss suffered in the export of trading goods was adjusted against the export incentives and deduction u/s 80HHC was reduced accordingly.

5. The assessee preferred an appeal before the CIT(Appeals) against the order passed by the Assessing Officer u/s 154 of the Act. The CIT(Appeals) agreed with the Assessing Officer and held that the provisions of Section 80HHC authorized the adjustment made by the Assessing Officer in the order passed by him u/s 154 of the Act and that in any case the issue was settled in favour of the Revenue by the judgment of the Supreme Court in the case of IPCA Laboratory Ltd. vs. Deputy Commissioner of Income Tax (2004) 266 ITR 520 (SC) . He also referred to the amendment made to the aforesaid Section by the Taxation Laws Amendment Act, 2005 with retrospective effect from 1st April, 1998. He, thus, dismissed the assessee's appeal.

6. The assessee filed an appeal before the Tribunal against the order of the CIT(Appeals) and contended that the issue sought to be rectified by the Assessing Officer in the order passed u/s 154 of the Act was a debatable issue and hence cannot be rectified as a mistake apparent from the record. It was also submitted that the Assessing Officer had framed the assessment after due consideration of all the relevant aspects of Section 80HHC and, therefore, cannot resort to rectification proceedings u/s 154 of the Act. These contentions were accepted by the Tribunal which held by order dated 28th May, 2010 that the rectification order passed by the Assessing Officer u/s 154 of the Act was not valid, that it amounted to review by the Assessing Officer of his own assessment order and that there was no glaring, patent or obvious mistake apparent from the record. The Tribunal also observed that merely because there was a possible loss of revenue, the provisions of Section 154 of the Act cannot be invoked. In this view of the matter, the Tribunal accepted the assessee's appeal and quashed the order passed by the Assessing Officer u/s 154 of the Act. In the view which the Tribunal took, it did not consider it necessary to examine the merits of the assessee's contentions.

7. The Revenue has filed the appeal against the aforesaid order passed by the Tribunal. The following substantial question of law is framed after hearing counsel for both the sides:- "Whether on the facts and in the circumstances of the case,

and having regard to the nature of the issue sought to be rectified, the Tribunal was right in law in quashing the order passed by the Assessing Officer u/s 154 of the Income Tax Act, 1961?

8. The matter poses little difficulty. In this case the assessee claimed deduction u/s 80HHC, inter alia, on the footing that the loss suffered by him in the export of trading goods need not be adjusted against the export incentives to the extent of 90% thereof. The question whether the loss has to be so adjusted has been settled in favour of the revenue by the judgment of the Supreme Court in the case of IPCA Laboratory Ltd.(supra). This judgment was rendered on 11th March, 2004. This was the law of the land and the ratio thereof ought to have been applied by the Assessing Officer while completing the assessment on 31st March, 2004. He, however, omitted to do so. Non-consideration of the judgment of the Supreme Court and non-application of the ratio of the said judgment to the facts of the present case, with reference to the claim of the assessee u/s 80HHC, is a glaring, patent and obvious mistake of law which can be rectified by resort to section 154 of the Act. It is also to be noted that there is no dispute regarding the facts and no further investigation was required to gather any more facts. On the admitted facts, the applicability of the judgment of the Supreme Court (supra) was not capable of generating any elaborate or long-drawn process of argument. In fact, no such plea appears to have been taken by the assessee. The omission to apply the judgment of the Supreme Court was a glaring and obvious mistake of law. In the circumstances, the case is covered by the ratio of the ruling of the Supreme Court in M.K. Venkatachalam, I.T.O. and Another Vs. Bombay Dyeing and Mfg. Co., Ltd., where it was observed that a glaring and obvious mistake by law can be corrected u/s 154. In Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Ltd., the Supreme Court held that where, after the Tribunal rendered its decision on appeal, a miscellaneous application was filed by the assessee u/s 254(2) of the Income Tax Act stating that the order of the Tribunal required to be rectified on the ground that a judgment of the jurisdictional High Court was not brought to the notice of the Tribunal, there was a mistake apparent from the record which required rectification. In that case the Tribunal decided the appeal on 27.10.2000. A judgment of the Gujarat High Court in Hiralal Bhagwati Vs. Commissioner of Income Tax, , which was the judgment of the jurisdictional High Court, was rendered a few months prior to the order of the Tribunal. However, the judgment was not brought to the attention of the Tribunal. An application u/s 254(2) of the Income Tax Act was filed before the Tribunal requesting the Tribunal to rectify its order so as to bring it in conformity with the law laid down by the jurisdictional High Court. The Tribunal accepted the application which action was upheld by the Gujarat High Court in the judgment reported as Assistant Commissioner of Income Tax Vs. Saurashtra Kutch Stock Exchange Ltd., . On appeal by the Revenue, the judgment of the Gujarat High Court (supra) was upheld by the Supreme Court holding that no error was committed by the Tribunal in rectifying the mistake. Though the facts of the case before the Supreme Court (supra)

show that the rectification was made by the Tribunal on the basis of the judgment of the jurisdictional High Court, the ratio would apply to the present case with stronger force because in the present case the rectification has been done on the basis of a judgment of the Supreme Court which is binding under Article 141 of the Constitution of India. In our considered view, the judgment of the Supreme Court in Saurashtra Kutch Stock Exchange Ltd. (supra) applies a fortiori to the present case.

9. The learned standing counsel for the Income Tax Department cited the judgment of the Allahabad High Court in Commissioner of Income Tax and Another Vs. Bindal Industries Ltd. and the judgment of the Punjab and Haryana High Court in Shahbad Co-Operative Sugar Mills Ltd. Vs. Deputy Commissioner of Income Tax, . The Allahabad High Court (supra) held that the law declared by the Supreme Court is binding on every court and authority and any decision taken earlier which is contrary to the law declared by the Supreme Court can be rectified u/s 154 of the Act. The Punjab and Haryana High Court (supra) also took the same view. These two judgments support the rectification order passed in the present case by the Assessing Officer.

10. We are, accordingly, unable to agree with the view taken by the Tribunal that there was no mistake apparent from the record requiring rectification. We, therefore, reverse the decision of the Tribunal and answer the substantial question of law in the negative and in favour of the Revenue and against the assessee.

11. The appeal of the revenue is allowed with no order as to costs.