

Commissioner of Income Tax Vs P.K. Bhardwaj

Income Tax R. No. 189 of 1999

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 8, 2004

Acts Referred:

Income Tax Act, 1961 – Section 116, 143(1), 154, 154(7), 155

Citation: (2006) 201 CTR 223 : (2005) 279 ITR 326

Hon'ble Judges: G.S. Singhvi, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: Rajesh Bindal, for the Appellant; None, for the Respondent

Judgement

Ajay Kumar Mittal, J.

At the instance of the Revenue, the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short "the

Tribunal") has referred the following question of law for the opinion of this Court :

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the view taken by the DCIT(A) to hold

that the question of allowing expenses against the amount incentive bonus received by a Development Officer of the LIC of India was a highly

debatable issue and outside the purview of Section 154 ?

2. The assessee, an individual, is a Development Officer with the Life Insurance Corporation of India. He filed his Income Tax return for the

assessment year 1992-93 declaring total income of Rs. 65,479. The case of the assessee was processed u/s 143(1)(a) of the Act and his income

was computed at Rs. 71,970. The assessee filed an application for rectification u/s 154 with a prayer that additions/disallowance, if any, be

deleted. The Assessing Officer also issued notice u/s 154 of the Act for adding income received by the assessee on account of incentive bonus.

The assessee raised objections to the proposed addition on the ground that it is a debatable issue as to whether incentive bonus is income or not

and, therefore, the same cannot be added u/s 154 of the Act to his total income. The Assessing Officer, however, did not agree with the contention

of the assessee and made the addition. The appeal filed by the assessee was allowed by the Deputy Commissioner of Income Tax (Appeals) (for

short, "the DCIT(A)"). He directed the Assessing Officer to delete the disallowance of 40 per cent, of the amount of incentive bonus received by

the appellant.

3. Shri Rajesh Bindal invited our attention to the judgment of this Court in B.M. Parmar Vs. Commissioner of Income Tax, wherein it has been

held that incentive bonus is assessable under the head "Salaries" and not under the head "Profits and gains of business or profession" and argued

that the additions made by the Assessing Officer in the income of the assessee did not suffer from any legal infirmity warranting interference by the

appellate authority. He pointed out that in terms of the aforementioned judgment, deduction u/s 16(i) of the Act is admissible under the head

Salaries" and no separate deduction on account of expenditure is permissible and, therefore, 40 per cent, cannot be allowed as expenses from

incentive bonus and the issue was no longer debatable so far as the authorities under the jurisdictional High Court are concerned. Shri Bindal then

argued that the Assessing Officer did not commit any error by invoking the provisions of Section 154 of the Act for the purpose of making

additions in the income of the assessee. In support of this argument, he placed reliance on Commissioner of Income Tax Vs. Hukam Chand Jain, .

4. We have considered the submissions of learned Counsel for the Revenue, but have not felt inclined to accept the same. Section 154 of the Act,

which provides for rectification of mistakes apparent from the record, reads as under :

154. (1) 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.

(1A) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in Sub-

section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under

that Sub-section in relation to any matter other than the matter which has been so considered and decided.

(2) Subject to the other provisions of this section, the authority concerned--

(a) may make an amendment under Sub-section (1) of its own motion, and

(b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee, and where the authority

concerned is the Deputy Commissioner (Appeals) or, the Commissioner (Appeals), by the Assessing Officer also.

(3) 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 section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the

assessee a reasonable opportunity of being heard.

(4) Where an amendment is made under this section, an order shall be passed in writing by the Income Tax authority concerned.

(5) Subject to the provisions of Section 241, where any such amendment has the effect of reducing the assessment, the Assessing Officer shall

make any refund which may be due to such assessee.

(6) Where any such amendment has the effect of enhancing the assessment or reducing a refund already made, the Assessing Officer shall serve on

the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued u/s

156 and the provisions of this Act shall apply accordingly.

(7) Save as otherwise provided in Section 155 or Sub-section (4) of Section 186 no amendment under this section shall be made after the expiry

of four years from the end of the financial year in which the order sought to be amended was passed.

5. In T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, , the Supreme Court, while considering the

scope of Section 154 of the Act, categorically laid down that 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. Their

Lordships further held that a decision on a debatable point of law is not a mistake apparent from the record.

6. Following the dictum laid down in T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, the

Calcutta High Court in Vijay Mallya v. Asst. CIT [2003] 263 ITR 41 held as under (page 48) :

Section 154 can be invoked for rectification of a mistake apparent from the record. The mistake contemplated u/s 154 must be a mistake

apparent on the face of the records. It must be obvious, clear and patent. It must not be a mistake, to establish which a long and elaborate

reasoning and arguments is required on points on which there may conceivably be two opinions. It must not be a debatable point of law. It must be

a patent and apparent mistake in the assessment. It must not be a question with regard to which two different views may be possible or with regard

to which two different opinions can be formed. It must be a glaring, obvious or self-evident mistake of fact or a mistake of law, in respect of which

there cannot be any two opinions and it should not be one in order to establish which a long-drawn process of argument or reasoning is to be

advanced.

7. In the present case, the intimation u/s 143(1)(a) of the Act was dated May 31, 1993, and order u/s 154 was passed on November 17, 1993.

The Tribunal dismissed the appeal of the Revenue on September 24, 1997. The decision by this Court in B.M. Parmar Vs. Commissioner of

Income Tax, was rendered on October 27, 1998, Sub-section (7) of Section 154 prescribes limitation of four years for initiation of action for

rectification of a mistake. Therefore, the action for rectification could have been taken by the Assessing Officer up to March 31, 1998, on the basis

of the judgment of the jurisdictional court. However, the fact of the matter is that action initiated u/s 154 had been finalised much before the

judgment of this Court in B.M. Parmar Vs. Commissioner of Income Tax, . There-fore, the Revenue cannot rely on that judgment to justify the

order passed by the Assessing Officer. The facts of Commissioner of Income Tax Vs. Hukam Chand Jain, are different as in that case, the

decision of the jurisdictional High Court had come before the decision of the Tribunal and the High Court had held that in that situation, the issue

could not be said to be debatable any longer. Such are not the facts of the present case.

8. In view of the above, the question of law referred by the Tribunal as reproduced above is answered against the Revenue and in favour of the

assessee.