
(2010) 230 CTR 284 : (2010) 320 ITR 54

High Court of Himachal Pradesh

Case No: None

Commissioner of
Income Tax

APPELLANT

Vs

H.P State Forest
Corporation Ltd.

RESPONDENT

Date of Decision: Sept. 2, 2009

Acts Referred:

Income Tax Act, 1961 " Section 144, 254, 254(2)

Citation: (2010) 230 CTR 284 : (2010) 320 ITR 54

Hon'ble Judges: V.K. Ahuja, J; Deepak Gupta, J

Bench: Division Bench

Judgement

Deepak Gupta, J.

Both the aforesaid appeals are being disposed of by this common judgment since they arise out of the same order and

have been admitted on following identical questions of law which read as follows:

i) Whether the ITAT was justified in holding that the directions given in the order dated 2.9.2003 to the effect that "the income assessed by the

A.O. should not be less than the income returned", was an apparent mistake and could be rectified through a misc. application.

ii) Whether the ITAT was right in issuing a fresh direction to the effect that "the assessed income should not be more than Rs. 1.4 crore, for the

A.Y. 1993-94, while completing the assessment" as it is totally against the law, particularly when the direction has been issued in a misc.

application even though there was no such point in issue during the original appellate proceedings.

iii) Whether the ITAT was right in law in directing the Assessing Officer to reassess the income of the assessee which should not be more than

income already assessed u/s 144 of the Income Tax Act, 1961 without bringing on record any material evidence as to the quantum of income of

the assessee.

iv) Whether the direction given by the Ld.ITAT in their order dated 30.7.2004 constitutes rectification of mistake u/s 254(2) of the Income Tax

Act, 1961 occurred in earlier order dated 2.9.2003 or it may be termed as review of ITAT's own order.

2. Briefly stated the facts of the case are that the assessee-M/s. H.P State Forest Corporation is engaged in the business of purchase, conversion

and sale of timber. The assessee filed returns of income for the assessment years 1993-94 and 1994-95 declaring income of Rs. 58 lacs and Rs.

57 lacs respectively. These returns were filed on estimate basis since the accounts of the assessee had not been audited by the office of the

Comptroller and Accountant General. The Assessing Officer treated these returns to be "non est" as the audited accounts were not annexed with

the returns and he issued notices u/s 148 of the Income Tax Act for filing fresh returns. Fresh returns were admittedly not filed and thereafter the

Assessing Officer completed the assessment for both the assessment years in exercise of the powers vested in him u/s 144 of the Act by using the

best judgment method. He assessed the income for the two years at Rs. 1.40 crores and Rs. 1.50 crores respectively.

3. These assessments were challenged before the Commissioner, Income Tax (Appeals), Shimla who confirmed the action of the Assessing

Officer. The assessee then filed appeals before the Income Tax Appellate Tribunal (ITAT), Chandigarh. The assessee gave an explanation that

since the auditors were not appointed by the CAG, the audited accounts could not be filed. This explanation was accepted by the ITAT and it held

that since the Assessing Officer had not gone through the audited accounts, the assessment order was liable to be set aside. The matter was

remanded to the Assessing Officer to frame afresh assessment keeping in view the audited accounts now submitted by the assessee. This order

itself makes it clear that the assessments were to be framed ""de novo"". However, the ITAT went on to hold that the income to be assessed by the

Assessing Officer should not be less than the income returned by the assessee for both the assessment years in his original returns which had been

treated as ""non est"".

4. Thereafter, the assessee filed rectification applications and prayed that the direction of the ITAT not to assess the income less than the income

originally returned be set aside and further a direction be issued that the income should not be more than the income assessed by the Assessing

Officer u/s 144 of the Act. These rectification applications were decided by the impugned order dated July 30, 2004 whereby the rectification

applications were allowed. The condition that the fresh assessment framed should not be more than the income disclosed by the assessee alongwith

his original return was recalled and a fresh stipulation was incorporated that the assessment should not be more than the income assessed by the

Assessing Officer u/s 144 of the Act.

5. We have heard Mr. Vinay Kuthiala, Advocate for the revenue and Mr. M.M.Khanna, learned Senior counsel for the assessee.

6. We are of the considered view that once the Tribunal had set aside the order of the Assessing Officer framing the assessment under the best

judgment method u/s 144 of the Act, it could have remanded the case back to the Assessing Officer to frame the assessment afresh on the basis of

the audited accounts. The ITAT however, had no jurisdiction, whatsoever, to have further given a direction that the income of the assessee could

not be assessed at less than the amount of income returned by it in the returns which were treated to be ""non est"" by the Assessing Officer. Once

the returns were treated to be ""non est"" then it meant that they were nonexistent in the eyes of law. Such a return which is ""non est"" cannot be used even against the assessee.

7. Furthermore, when the Tribunal was directing de novo framing of the assessment then it obviously meant that the assessment had to be framed

afresh keeping in view the audited accounts which were now available. Therefore, such a stipulation could not have been made.

8. Having held so, we are also of the opinion that the Tribunal could not have given a direction, while disposing of the rectification applications, that

the income or fresh assessment should not be assessed at an amount above the income assessed u/s 144 of the Act. The question as to what is the

income of the assessee had been reopened in view of the audited accounts submitted by the assessee himself. No fetters as to the upper or lower

limit could have been placed by the Tribunal on the Assessing Officer. He had to go through the audited accounts, apply his mind and frame the

assessment afresh in accordance with the duly audited accounts placed on record.

9. We may also add that the power of rectification vested in the Tribunal u/s 254 of the Act is akin to the power of review. Only an error apparent

on the record can be rectified. The Tribunal could have rectified its order to the extent that it had no power to place fetters on the Assessing

Officer that he should not assess the income at less than the income returned in the ""non est"" return but it did not have the power at the same time

to incorporate a fresh condition.

10. In view of the above discussion, we hold that the Assessing Officer shall assess the income afresh without being bound by any lower or upper

limit as laid down by the Tribunal. Question No. 1 is answered in favour of the assessee and against the revenue. Questions No. 2 and 3 are

answered in favour of the revenue and against the assessee. Question No. 4 is answered by holding that ITAT could have only rectified the

mistake as referred in the question and could not have issued fresh directions as already held by us. The appeal is disposed of in the aforesaid

terms.

11. No order as to costs.