

(1974) 11 AHC CK 0007**Allahabad High Court****Case No:** Income-tax Reference No. 711 of 1972

Commissioner of Income Tax

APPELLANT

Vs

Sir Shadilal Sugar and General
Mills

RESPONDENT

Date of Decision: Nov. 12, 1974**Acts Referred:**

- Income Tax Act, 1961 - Section 154

Citation: (1978) 114 ITR 729**Hon'ble Judges:** Satish Chandra, J; K.B. Asthana, J**Bench:** Division Bench**Final Decision:** Dismissed**Judgement**

Satish Chandra, J.

For the assessment year 1959-60, Sir Shadi Lal Sugar and General Mills Ltd., Mansurpur, the assessee, was assessed to an income of Rs. 1,71,577 by an assessment order dated March 31, 1964. The Income Tax Officer applied Rule 8 of the Income Tax Rules for granting extra shift allowance on machinery and plant, and worked out this allowance to Rs. 1,18,509. This was on the basis that 50 per cent. of the normal depreciation was allowable. The assessee felt aggrieved and went up in appeal to the Appellate Assistant Commissioner, who reduced the assessable income to Rs. 1,35,861. The extra shift allowance given by the Income Tax Officer was not modified.

2. On February 21, 1968, the Income Tax Officer issued a notice u/s 154 of the Income Tax Act, 1961, calling upon the assessee to show cause why the extra shift allowance be not rectified. The assessee filed an objection, but by an order dated March 28, 1968, the Income Tax Officer held that the extra shift allowance at 50 per cent. of the normal depreciation was wrongly allowed, that according to the correct interpretation of Rule 8, the extra shift allowance had to be calculated

proportionately to the actual days during which the machinery and plant had worked, taking the normal working days in the year at three hundred, and that so worked out the allowance would be very much less than 50 per cent. of the normal depreciation. He accordingly rectified the original assessment order.

3. The assessee went up in appeal. The Appellate Assistant Commissioner held that on the construction of Rule 8 there was a difference of opinion between the Benches of the Appellate Tribunal. In the case of Lord Krishna Sugar Mills, the Tribunal held that the extra shift allowance should be calculated at half the rate of normal depreciation, and the provision regarding three hundred days is to be read subject to the condition that a seasonal factory is supposed to run for the whole period if it has worked during the entire season. In the case of Kundan Sugar Mills, the Delhi Bench of the Tribunal had held that this allowance had to be calculated according to the actual number of working days. . The question was thus highly controversial and there was conflict of "opinion on the point. It could not hence be said that it was a case of mistake apparent from the record. On this view, the rectification made by the Income Tax Officer with regard to extra shift allowance was set aside.

4. The Income Tax Officer went up to the Appellate Tribunal in appeal. The Tribunal held that the view that if the factory had worked for the full season, it should be deemed to have worked for the full period of three hundred days so as to entitle to 50 per cent. of the normal depreciation was not accepted by the Allahabad High Court in the case of Raza Sugar Co. Vs. Commissioner of Income Tax, and that the calculation of extra shift allowance made by the Income Tax Officer in the original assessment order was, therefore, incorrect. The Tribunal further held that the language of the rule and the statement made in the remarks column were not so clear as to support what the Income Tax Officer had done in the rectification order ; that they are capable of more than one interpretation, that this was a case where the alleged error could come to the surface or may be discovered after employing a process of elucidation, debate, argument or reasoning; and that such an error was not a mistake apparent from the record ; when the Income Tax Officer made the rectification, the High Court's view was not available, and it cannot hence be said that the Income Tax Officer acted upon law settled by the High Court, On this view, the appeal was dismissed.

5. At the instance of the department, the Tribunal has referred the following question of law for the opinion of this court :

"Whether, on the facts and circumstances of the case, the Tribunal was justified in holding that the action of the Income Tax Officer u/s 154 was unwarranted ?"

6. On the decided cases it seems settled that a mistake, to be apparent from the record within the meaning of Section 154 of the Act, ought to be a mistake which does not require any elucidation or debate for its discovery.

7. For the department reliance was placed upon [Maharana Mills \(Private\) Ltd. Vs. Income Tax Officer, Porbandar](#), wherein the Supreme Court held that a mistake contemplated by the section is not one which is to be discovered as a result of an argument. It was held that if on checking up it is found that the previous calculations were wrong, the officer could correct it after making fresh calculations. This was a case of an apparent arithmetical error. The case is, therefore, distinguishable.

8. In [Walchand Nagar Industries Ltd. Vs. V.S. Gaitonde, Income Tax Officer, Companies Circle 1\(3\), Bombay and Another](#), the rectification was based upon a Supreme Court decision. The effect of the decision of the Supreme Court was that the levy of excess dividend tax was at no time good, and, therefore, the assessment order made by the Income Tax Officer levying excess dividend tax was bad on the date it was made. Such mistake was apparent from the record and was rectifiable. This case is not helpful, because in the present case no binding declaration of law had been made either by the High Court or by the Supreme Court when the rectification order was passed. There is no allegation of finding that the Income Tax Officer was aware even of the conflicting opinion of the Tribunal at the time when he passed the order.

9. Similarly, in [S.A.L. Narayana Row, Commissioner of Income Tax, Bombay City, and Another Vs. Model Mills Nagpur Ltd.](#), the rectification was applied for on the basis of the law declared by the Supreme Court. This case is also distinguishable.

10. The question as to the application of Rule 8 to a seasonal factory in order to work out the extra shift allowance cannot be said to be free from controversy. In two reported decisions, the Punjab High Court had construed Rule 8 in a manner different from the Allahabad High Court: See [COMMISSIONER OF Income Tax, PUNJAB Vs. SARVESHWAR NATH NIGAM.](#) and [COMMISSIONER OF Income Tax, DELHI AND RAJASTHAN Vs. BANARASI DASS AND SONS.](#).

11. In [T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay](#), the Supreme Court held 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. A decision on a debatable point of law is not a mistake apparent from the record. If the construction of a particular provision was not free from doubt, it was not open to the Income Tax Officer to go into the true scope of the provisions of the Act in a rectification proceeding u/s 154 of the Income Tax Act. In view of this principle it cannot but be held that the Income Tax Officer was in error in reopening the debatable question of the applicability of Rule 8.

12. Our answer to the question referred to us is in the affirmative, in favour of the assessee and against the department. The assessee will be entitled to costs, which are assessed at Rs. 200.