

Commissioner of Income Tax Vs Sarju Prasad

Court: Allahabad High Court

Date of Decision: May 16, 1983

Acts Referred: Income Tax Act, 1961 " Section 154, 212(3A), 217(1A), 264

Citation: (1983) 35 CTR 322 : (1984) 148 ITR 718 : (1983) 15 TAXMAN 99

Hon'ble Judges: V.K. Mehrotra, J; R.M. Sahai, J

Bench: Division Bench

Advocate: M. Katju, for the Appellant; K.B. Jindal, for the Respondent

Final Decision: Disposed Of

Judgement

R.M. Sahai, J.

Income Tax Appellate Tribunal, Allahabad Bench, Allahabad, has referred the following questions of law for opinion to this

court:

1. Whether, on the facts and circumstances of the case, the Tribunal was right in law in holding that there was no occasion and no obligation on

the part of the assessee to file a revised estimate u/s 212(3A) of the Act ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was entitled to move an

application u/s 154 for rectification of a mistake regarding charging of interest u/s 217(1A) of the Act ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in reversing the orders of the authorities below ?

2. The assessee was a partner in the firm, M/s. Janki Sugar Mills and Co., Dohiwala District, Dehradun, which was taken over by the Government

of India u/s 18AA(1) of the Industries (Development and Regulation) Act of 1951, on January 15, 1973. The general manager of the mill informed

the assessee of his share of profits in the firm for the assessment year 1974-75, on April 11, 1974, when he supplied copies of account for the

year ending October 27, 1973. The assessee observed Diwali year. As such, the last installment of advance tax was payable by December 15,

1973. On April 13, 1976, the assessment order in respect of the year in dispute was passed and it was supplied to the assesses on April 16,

1976. In it the ITO computed interest for non-payment of advance tax u/s 217(1A). Against this, the assessee filed an application u/s 154 of the

I.T. Act for rectification claiming that as the assessee came to know of his share only in April, 1974, it was not possible for him to pay advance tax

which should have been deposited, latest by March 15, 1974. His application was rejected by the ITO and the order was maintained in appeal.

The Tribunal, however, did not agree. It found that there was no occasion for the assessee to file a revised estimate u/s 212(3A). In respect of

Section 154, it found that as the assessee was under a misapprehension of law, the application was maintainable. Further, on merits also, the

Tribunal found that the assessee was entitled to apply for rectification as there was reasonable cause for failure to furnish the estimate of advance

tax payable by him in accordance with Sub-section (3A) of Section 212.

3. As regards the entitlement of the assessee to file an application for rectification, its stands concluded by a Full Bench decision of our court in

Commissioner of Income Tax Vs. Geeta Ram Kali Ram and Suresh Chandra, . It was observed at p. 717 that the remedy in respect of levy of

interest is not by filing an appeal against the regular assessment order but by way of rectification u/s 154 or revision to the Commissioner u/s 264.

4. As regards the scope for interference u/s 154, reliance was placed by learned counsel for the Commissioner on T.S. Balaram, Income Tax

Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, , and it was urged that the mistake not being obvious or patent but was of

such a nature which could be established only by a long drawn process of reasoning on which two inferences were possible, it could not be

rectified u/s 154. On the facts found by the Tribunal, we do not think that this argument can be sustained as the time to deposit the last installment

of advance tax having expired in March, 1974, and the assessee having come to know of inclusion of interest only in April, 1976, he could not file

the revised estimate within time. This, in our opinion, does not need any argument or long drawn process of reasoning. Not only this, we do not

find any error in the finding of the Tribunal that there was reasonable cause for failure to furnish the estimate of advance tax payable by the

assessee in accordance with Sub-section (3A) of Section 212. The finding appears to be well founded, in the circumstances of the case. No

exception, therefore, can be taken to the order passed by Tribunal.

5. In the result, the questions referred to us are answered in favour of the assessee and against the Department, The assessee shall be entitled to its

costs which are assessed at Rs. 200.