Commissioner of Income Tax Vs J.K. Bankers

Court: Allahabad High Court

Date of Decision: Nov. 2, 1999

Acts Referred: Income Tax Act, 1961 â€" Section 154, 196(3)

Citation: (2001) 165 CTR 513 : (2000) 245 ITR 844 : (2003) 130 TAXMAN 127

Hon'ble Judges: S.K. Jain, J; M.C. Agarwal, J

Bench: Division Bench

Advocate: A.N. Mahajan, for the Appellant; R.S. Agarwal, for the Respondent

Final Decision: Dismissed

Judgement

1. The Income Tax Appellate Tribunal, Allahabad, has u/s 256(1) of the Income Tax Act, 1961, referred the following questions stated to be of

law and to arise out of its order passed in ITA No, 377 (Alld.) of 1975-76 for the assessment year 1971-72 for the opinion of this court :

1. Whether, on the facts and in the circumstances of the case, a second application u/s 154 of the Income Tax Act, 1961, lies when there has

been no change in the factual or the legal situation ?

2. Whether a successor-Appellate Assistant Commissioner can entertain an application u/s 154 for adjudication of the same question ?

2. We have heard Sri A. N. Mahajan, learned counsel for the Commissioner, and Sri R. S. Agarwal, learned counsel for the respondent.

3. The Income Tax Officer made an assessment of the total income of the assessee at Rs. 2,42,710 by an order dated March 7, 1972. The total

income included an income of Rs. 52,952 as income from property. The assessee claimed relief u/s 80K of the Act in respect of certain dividends

received from J.K. Synthetics Ltd. This claim was disallowed by the Assessing Officer on the ground that the assessee had failed to produce the

required certificate u/s 196(3) of the Income Tax Act. The assessee appealed to the Appellate Assistant Commissioner. In appeal proceedings, the

requisite certificate was filed and the assessee"s appeal was allowed with the following observations :

1. The sole contention of the appellant in the present appeal is that the Income Tax Officer was not justified in not allowing exemption of claim in

respect of the dividend of J.K. Synthetics Ltd. The assessment order shows that the Income Tax Officer did not allow the deduction in the absence

of a proper certificate from the company,

2. According to the certificate dated May 19, 1972, granted by the Income Tax Officer, J.K. Synthetics Ltd., copy filed before me the entire

amount of dividends from J.K. Synthetics Ltd., is entitled to exemption u/s 80K.

3. I have discussed vide my appellate order of date for the assessment year 1968-69 why the deduction u/s 80K is admissible in the hands of the

firm only and not in the hands of the partners.

4. According to the scheme of the Act u/s 80A(1), the deduction admissible u/s 80K has to be allowed from the gross total income for computing

the total income of the assessee. Gross total income is defined under Sub-section (5) of Section 80B. It means the total income computed in

accordance with the provisions of this Act before making any deduction under this Chapter. Thus, the gross total income for the purposes of the

exemption being claimed by the appellant would be Rs. 52,952. Sub-section (2) of Section 80A has prescribed the limit of deduction. According

to this Sub-section, the aggregate amount of deductions under this Chapter VI-A of the Income Tax Act, 1961, shall not, in any case, exceed the

gross total income of the assessee. In the instant case as the gross total income is only Rs. 52,952 is allowed a deduction of Rs. 52,952 which will

reduce the gross total income of Rs. 52,952 to a nil figure of the total income.

4. The assessee moved an application u/s 154 of the Act for rectification of the mistake stating that it was wrongly mentioned in the appellate order

that the total income was Rs. 52,952 while actually the total income was Rs. 2,42,710. This application was rejected by the Appellate Assistant

Commissioner with an order as under :

The appellant by his application u/s 154, dated June 21, 1973, has claimed that in para. 4 of my predecessor''s order dated May 31, 1973, for

the assessment year 1971-72 a mistake had occurred in para. 4 where the, figure of gross total income has been mentioned at Rs. 52,952 which

should have actually been Rs. 2,42,710 and the appellant has prayed for necessary rectification in lines 8, 12, 13 and 14 of the above order. I

have looked up the records and I find that no mistake has occurred. My predecessor deliberately took the figures of gross total income at Rs.

52,952 and there was no mistake through inadvertence or oversight. He has given his reasons for taking the gross total income at Rs. 52,952. It is,

therefore, not open to the appellant to challenge his discretion in an order u/s 154.

The application is rejected.

5. Again the assessee moved another application u/s 154 of the Act pointing out the same mistake and this time the Appellate Assistant

Commissioner who had in the mean time succeeded the earlier officer, allowed the application u/s 154 observing as under :

I find sufficient force in the contentions of the learned representative of the appellant. The Income Tax Officer vide his order dated March 4,

1972, computed the total income at Rs. 2,42,710 as under :

(Rs.)

(i) Income from property 52,952

(ii) Income from business (Ã¯Â¿Â½) 2,89,815

(iii) Income from other sources 2,47,259

(iv) Income from capital gains 22,313

2,42,710

The appellant was entitled to a deduction of Rs. 4,03,797 u/s 80K being the amount of tax-free dividend received from the J.K. Synthetics Ltd.

but as this deduction was claimed under Chapter VI-A of the Income Tax Act, 1961, the provisions of sections 80A and 80B are very relevant.

Hence, these are reproduced hereunder :

''80A. (1) In computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the

provisions of this Chapter, the deductions specified in sections 80C to 80U.

(2) The aggregate amount of the deductions under this Chapter shall not, in any case, exceed the gross total income of the assessee.

80B. (5) ""gross total income"" means the total income computed in accordance with the provisions of this Act, before making any deduction under

this Chapter or u/s 280-O.''

From the above it is clear that the deductions under Chapter VIA have to be restricted to the gross total income and which means the total income

computed in accordance with the provisions of this Act, before making any deduction under this Chapter or u/s 280-O. The gross total income has

been computed by the Income Tax Officer at Rs. 2,47,710 and as the appellant''s claim u/s 80K much exceeds the gross total income, computed,

the appellant is entitled to deduction to the extent of Rs. 2,42,710 only. Hence, I hold that the amount of Rs. 52,952 appearing in lines 1, 12, 13

and 14 of paragraph 4 of my predecessor''s order dated May 31, 1973, have been mentioned inadvertently and that, therefore, the amount of Rs.

2,42,710 would be substituted in its place in all the four lines.

In the result, the application is allowed. The Income Tax Officer is directed to give the relief accordingly.

6. The Income Tax Officer appealed to the Tribunal which dismissed the same holding that there was a mistake in the order of the Appellate

Assistant Commissioner which was rightly rectified. The Tribunal observed as under:

7. In our opinion, there is no force in this appeal. We agree with the contention of the assessee''s representative that there is no bar for filing

petitions one after the other provided they are within limitation u/s 154 for rectification of mistake. The mistakes should be that apparent from the

face of the record and they did not require any fresh investigation of facts and did not involve any debatable issue. In this case, we agree with the

contention of the assessee''s representative that the mistake was only in regard to figures of income assessed on which the assessee was entitled to

relief. This figure as mentioned in the assessment year and also on the top of the Appellate Assistant Commissioner''s order was Rs. 2,42,710. The

assessee was entitled to relief on this figure. If by mistake the Appellate Assistant Commissioner had put the figure of Rs. 52,952 a figure

representing the income from property only as against the total income assessed at Rs. 2,42,710, the said mistake could be rectified u/s 154.

Merely because one Appellate Assistant Commissioner has rejected the assessee''s application in this regard, it cannot be said that the order of the

later Appellate Assistant Commissioner, rectifying the mistake is in any way incorrect or amounts to review of the earlier order of the Appellate

Assistant Commissioner by a later Appellate Assistant Commissioner.

7. At the instance of the Commissioner, the aforesaid questions have been . referred by the Tribunal for the opinion of this court.

8. We have reproduced the relevant extracts from the various orders so that the facts of the case and the nature of the controversy could be

properly appreciated. The Act confers power on the authorities to rectify mistakes in orders that are apparent from the record and it is settled law

that an order passed in the Income Tax proceeding is binding on the authorities in those proceedings, though it may not operate as res judicata for

another year or in some other proceedings. In the present case, the Appellate Assistant Commissioner was dealing with an appeal in which a

speaking order was made by the Appellate Assistant Commissioner holding that the total income for the purposes of the assessee''s claim was Rs.

52,952. When the assessee moved the first application u/s 154, the Appellate Assistant Commissioner rejected the same holding that there was no

mistake and his predecessor had deliberately taken the figure of gross total income at Rs. 52,952 and there was no mistake through inadvertence

or oversight. This order having not been appealed against, became final and the Appellate Assistant Commissioner who succeeded the earlier

officer, could not entertain a second application u/s 154 and allow the same by reviewing his predecessor''s order. Learned counsel for the asses-

see," Sri R. S. Agarwal, has not been able to show us any authority which might support the conduct and the order of the Appellate Assistant

Commissioner in passing the second order u/s 154. In our view, the first application having been dismissed, a second application for the

rectification of the same alleged mistake was not maintainable and the remedy of the assessee was to avail of the remedy of appeal.

9. Learned counsel for the assessee, however, contended that the controversy raised in the aforesaid questions is only of academic interest as the

Appellate Assistant Commissioner had in his order dated May 31, 1973, held that the gross total income of Rs. 52,952 stands reduced to nil. No

such contention appears to have been raised before the Tribunal and in any case this will depend on an interpretation of the said order which we

are not inclined to do in these proceedings.

10. For the above reasons, the aforesaid questions are answered in favour of the Commissioner and against the assessee holding that on the facts

and in the circumstances of the case, the second application u/s 154 of the Income Tax Act, 1961, was not maintainable and the Appellate

Assistant Commissioner could not entertain such application.