

(2014) 04 AHC CK 0233

Allahabad High Court

Case No: Income Tax Appeal No. 277 of 1999

Commissioner of Income Tax

APPELLANT

Vs

Rampur Distillery and Chemical
Co. Ltd.RESPONDENT

Date of Decision: April 24, 2014**Acts Referred:**

- Income Tax Act, 1961 - Section 154, 260A, 3, 3(2), 3(4)

Citation: (2014) 364 ITR 551**Hon'ble Judges:** Shashi Kant, J; Rajesh Kumar Agrawal, J**Bench:** Division Bench**Advocate:** D. Awasthi, Advocate for the Appellant; Vikram Gulati and R.S. Agrawal,
Advocate for the Respondent

Judgement

1. Heard Sri Dhananjai Awasthi, learned counsel for the appellant and Sri Mukesh Jain, along with Sri R.S. Agrawal, learned counsel appearing on behalf of the respondent. This appeal, u/s 260A of the income tax Act, relating to the assessment years 1988-89 and 1989-90, arises from the order of the Tribunal, dated May 19, 1990, which raises the following substantial questions of law:

(i) Whether the Tribunal was justified in upholding the order of the Commissioner of income tax (Appeals) who directed the Assessing Officer to frame a single assessment for the entire period from January 1, 1987, to March 31, 1989?

(ii) Whether the Tribunal was justified on the facts of the case in upholding the order of the Commissioner of income tax (Appeals), who observed the order, passed u/s 3(4) of income tax Act, 1961, on December 7, 1987, remained legally valid and did not become non est as a result of the amendment introduced in section 3 of the income tax Act, 1961, by the Taxation Laws (Amendment) Act, 1987, despite the fact that, in terms of the said order u/s 3(4) the assessee would not have any previous year relevant to the assessment year 1988-89, a situation which is incongruous with

the amended provisions of section 3(2) of the income tax Act, 1961?

2. The brief facts, giving rise to the present appeal, are that the respondent-assessee (hereinafter referred to as "the assessee") is a company, incorporated under the Companies Act, 1956, which is engaged in the business of running the distillery and fertilizer, etc., filed the return, for the assessment year 1989-90, declaring a loss of Rs. 7,87,68,821. The return was filed for the period January 1, 1987, to March 31, 1989, that is, for 27 months.

3. It appears that the previous year, adopted by the assessee, was the calendar year. The assessee filed the return for the assessment year 1987-88, for the period January 1, 1985, to December 31, 1986. In pursuance thereof, the assessment was made for the assessment year 1987-88 about which there is no dispute. The assessee moved an application before the assessing authority seeking the permission to change the previous year from the calendar year to adopt the previous year ending on June 30 of every year, vide application dated November 12, 1987. The said application was allowed and the assessee was accorded permission to close its previous year on June 30. Accordingly, the assessee was to close the previous year on June 30, 1988, relevant to the assessment year 1989-90. In the meanwhile, an amendment was made in section 3 of the income tax Act by the Taxation Laws (Amendment) Act, 1987, by which a uniform previous year ending on March 31 of every year, commencing from 1989-90, has been prescribed. In view of the amendment, instead of ending the previous year on June 30, 1988, relevant to the assessment year 1989-90, the assessee had to adopt the previous year ending on March 31, 1989, relevant to the assessment year 1989-90 and, accordingly, the return was filed for the period January 1, 1987, to March 31, 1989.

4. It appears that the assessing authority cancelled the permission granted to the assessee adopting the previous year ending on June 30 every year, in view of the amendment in section 3 by passing an order u/s 154.

5. The assessee challenged the said order in appeal. The Commissioner of income tax (Appeals) allowed the appeal and set aside the order passed u/s 154. Against the said order, the Revenue filed the appeal before the Tribunal, which has been dismissed by the order dated September 1, 1997. It appears that the Revenue further filed the reference, which has been rejected, vide order dated December 18, 1998. In view of the cancellation of the order, passed u/s 154, the permission accorded by the assessing authority to the assessee for adopting the previous year, ending on June 30, every year, stood valid. The said order has attained finality.

6. The assessing authority, in view of the order passed u/s 154, cancelling the permission accorded to the assessee to change the previous year, passed two orders, one, for the assessment year 1988-89, for the period January 1, 1987, to December 31, 1987, and the other for the assessment year 1989-90, for the period ending on March 31, 1989, namely, for the period January 1, 1988, to March 31,

1989.

7. The assessee filed two appeals before the Commissioner of income tax (Appeals). Both the appeals have been allowed by the Commissioner of income tax (Appeals), vide order dated October 19, 1992. The Commissioner of income tax (Appeals) has set aside both the assessment orders and remanding back the cases to the assessing authority with the direction to pass one assessment order of the assessment year 1989-90, on the basis of the return filed by the assessee, relating to the previous year, that is, for the period of 27 months, commencing from January 1, 1987, and ending on March 31, 1989.

8. Being aggrieved by the said order, the Deputy Chief income tax Commissioner (Assessment) filed two appeals before the Tribunal. The Tribunal, vide order dated May 19, 1999, rejected both the appeals.

9. The Tribunal held that the order u/s 154 has been set aside in appeal and the said order has attained finality, resulting that the order passed granting permission to adopt the previous year ending on June 30 stood valid. In view of the said fact, the Tribunal observed that there is no justification in taking a different view in the matter.

10. Learned counsel for the appellant is not able to point out that the order of the Tribunal, dated September 1, 1987, has been modified or set aside by any of the competent authority.

11. The result is that the order of the assessing authority, granting permission to adopt previous year, ending on June 30 of every year, stood valid. The assessing authority passed two assessment orders for one assessment year on the ground that the order granting permission to change the previous year on June 30 of every year has been set aside u/s 154. Since the very basis of passing two assessment orders does not survive, we do not find any error in the order of the Tribunal. Even otherwise also, we are of the view that the assessment made for the assessment year 1989-90, for the period, namely, January 1, 1987, to March 31, 1989, is in consonance with the amended section 3, which stood amended by the Taxation Laws (Amendment) Act, 1987. After the amendment in section 3 by the Amendment Act, 1987, the assessee itself changed the previous year from June 30 to March 31, 1989. The said amendment was admittedly applicable to the assessment year 1989-90, therefore, there is no ambiguity in adopting the period of assessment from January 1, 1987, to March 31, 1989.

12. In view of the discussions made above, both the questions are answered in the affirmative against the Revenue and in favour of the assessee. The appeal stands dismissed.