(1989) 11 MP CK 0032

Madhya Pradesh High Court

Case No: Miscellaneous Civil Case No. 237 of 1984

Sagar Co-operative Central Bank Ltd.		APPELLANT
	Vs	
Commissioner of Income Tax		RESPONDENT

Date of Decision: Nov. 29, 1989

Acts Referred:

- Income Tax Act, 1961 - Section 154, 80P, 80P(2)

Citation: (1990) 85 CTR 206 : (1990) 186 ITR 292 : (1990) 53 TAXMAN 273

Hon'ble Judges: S.K. Jha, C.J; K.M. Agrawal, J

Bench: Division Bench

Advocate: B.L. Nema, for the Appellant; B.K. Rawat, for the Respondent

Judgement

S.K. Jha, C.J.

A statement of the case has been submitted by the Income Tax Appellate Tribunal, Jabalpur Bench, Jabalpur, u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), and the following question of law has been referred to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that, in view of the decision of the M. P. High Court dated 12th December, 1979, there was a mistake apparent from the record in its order dated 10th January, 1979, and, on that account, rectifying its order ? "

2. The relevant facts are these : The assessee is Sagar Co-operative Central Bank Ltd. The assessment year involved is 1974-75. The assessee had earned commission income amounting to Rs. 55,134 from the M. P. Electricity Board for collection of electricity bills. It claimed that this income was exempt. The Income Tax Officer disallowed the claim and brought this amount to tax. A copy of the assessment order of the Income Tax Officer is annexure "C".

3. In the appeal before the Appellate Assistant Commissioner, it was urged that the work of collection of bills by the bank was included in the activities of the bank and within the meaning of Section 6(1) of the Indian Banking Companies Act and, therefore, the income derived from this activity would be income from banking business. The Appellate Assistant Commissioner accepted this claim and deleted the addition. Annexure "B" is the copy of the Appellate Assistant Commissioner''s order forming part of the statement of the case.

4. The Revenue went up in appeal before the Tribunal and challenged the order of the Appellate Assistant Commissioner. It was contended that "banking" as defined in section 5 of the Banking Regulation Act, 1949, did not include the activity for which the assessee had received payment from the Madhya Pradesh Electricity Board and, therefore, Section 80P(2)(a)(i) of the Act did not entitle the assessee to claim exemption of this income from taxation. The Tribunal, by its appellate order dated 10th January, 1979, affirmed the order of the Appellate Assistant Commissioner and dismissed the departmental appeal. Copy of the Tribunal''s appellate order forms part of the statement of the case as annexure "C".

5. Thereafter, this High Court, in M. C. C. No. 778 of 1975, decided the question in the assessee''s own case with regard to the preceding year on 12th December, 1979, and it was held by the High Court that the income earned by the assessee for collecting the bills of the Madhya Pradesh Electricity Board is not exempt u/s 80P(2)(a)(i) of the Act. A copy of the order of the High Court has been marked as annexure "D" to the statement of the case. Against the aforesaid judgment of this High Court, an appeal is pending before the Supreme Court.

6. As a result of the decision of this court with regard to an earlier year, the Department moved an application u/s 254(2) of the Act for rectification of the order of the Tribunal in the light of the decision of the High Court. A copy of the application has been marked as annexure "E" to the statement of the case and forming part thereof. The Tribunal allowed this application and rectified its order holding that there was a mistake apparent from the record.

7. It was pointed out that the SLP filed by the assessee in the Supreme Court was admitted and it was urged that since the matter has not become final, a reference may be allowed. Thus this reference.

8. The only question for determination in this case is whether there can be said to have been any mistake apparent from the record which could be rectified by the Tribunal. Admittedly, when the Tribunal passed its appellate order, the judgment of this court was not there. Admittedly, the Revenue also did not make any application for a reference u/s 256(1) of the Act. Instead of seeking a reference to this court against the appellate order of the Tribunal, what the Revenue did was to file an application for rectification u/s 254(2) of the Act.

9. It is well-settled 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. Reference in this connection may be made to a decision of the Supreme Court in T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, . Although the Supreme Court was dealing with a case u/s 154 of the Act, the term which fell for consideration was the same, namely, "mistake apparent from the record".

10. It is worthwhile repeating that, as in the earlier years, the Tribunal, without reference to any of its decisions for the previous years, had come to the same conclusion in respect of the exemption in the assessment year 1974-75 with regard to the scope of Section 80P(2)(a)(i). Merely because the High Court took a view contrary to that of the Tribunal with regard to an earlier year after the passing of the appellate order in respect of the assessment year 1974-75, it could not be said that there was any error apparent from the record in the appellate order of the Tribunal for the year in question. Especially because the decision of this court was already the subject-matter of an appeal before the Supreme Court and the Supreme Court may as well take a view different from that taken by this court and may reverse the decision of this court. In any event, it cannot be said that the mistake is an obvious and patent mistake because, for various assessment years preceding the year in question, the Tribunal had taken a contrary view. The same view had been taken with regard to this year also. The view subsequently taken by the High Court in respect of an earlier assessment year could not be said to have made the point incapable of two opinions. In any event, so long as the matter pending consideration before the Supreme Court is not. settled, it cannot be said that there is no debatable point of law involved. The mistake, if any, in the Tribunal''s appellate order, is something which could be established only by a long-drawn process of reasoning on the point of exemption u/s 80P(2)(a)(i).

11. Learned counsel for the Revenue, however, took pains and invited our attention to a Division Bench decision of the Calcutta High Court in Commissioner of Income Tax Vs. Purtabpore Co. Ltd., . The ratio of that case does not apply to the case in hand. It will appear from the decision in Commissioner of Income Tax Vs. Purtabpore Co. Ltd., that at the material time, there was neither any conflict of judicial opinion on the relevant rule between different High Courts, nor was any matter pending before the Supreme Court which was to be resolved or settled by the apex Court. As a matter of fact, there was already a judgment of the High Court at the time when the Appellate Assistant Commissioner had passed the appellate order on the basis of an earlier order of the Tribunal which had been overruled by the High Court. In the Calcutta case, it has been observed that "strangely enough, the Appellate Assistant Commissioner, without considering the said decision of this court, followed the order of the Tribunal for the earlier assessment year where the

Tribunal took a contrary view" and furthermore, at page 366, it has been observed : "The validity of the action of the Income Tax Officer must be judged from the facts as they were at the time when the action was taken. It is not the case of the assessee that, at the material time, there was any conflict of judicial opinion on the relevant rule between different High Courts or the matter was pending before the Supreme Court to be resolved and settled by the Supreme Court."

12. In the instant case, firstly, there was no order by the High Court on the date when the appellate order of the Tribunal was passed and, secondly, on the date when the Tribunal purported to rectify the so called mistake apparent from the record, the matter was already pending before the Supreme Court to be resolved and settled by that court. Even the aforesaid Calcutta decision is, therefore, against the Revenue.

13. Reference was also made to the case of Omega Sports and Radio Works Vs. Commissioner of Income Tax, and that of this court in the case of Commissioner of Income Tax Vs. Jagannath Narayan Kutumbik Trust, . In the case of Omega Sports and Radio Works Vs. Commissioner of Income Tax, the Allahabad High Court held that a mistake apparent from 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 can be two opinions. On the facts of that case, however, it appears that the matter has been settled by the High Court and although there was some judicial divergence of opinion on the point between some High Courts, the matter was not the subject of an appeal before the Supreme Court where the question had to be resolved.

14. Similarly, in the case of Commissioner of Income Tax Vs. Jagannath Narayan Kutumbik Trust, this court had taken a view that there was an error apparent from the record so far as the High Court was concerned and the same not having been taken to any higher court, it became the settle law so far as the Tribunal, subject to this court''s jurisdiction, was concerned and that, therefore, there was an error apparent from the record.

15. It would bear repetition to say that in the instant case, on the date when the Tribunal had passed the appellate order, this court''s decision was not there. In the second place, the decision of this court was and is already pending before the Supreme Court to be tested. Therefore, it cannot be said that the point is not debatable. It will, therefore, be seen that it involves a long-drawn process of reasoning to establish that there was an error apparent in the Tribunal''s appellate order for the assessment year 1974-75. In the result, therefore, the question referred to this court must be answered against the Revenue and in favour of the assessee as the Tribunal was not legally correct in holding that there was a mistake apparent from the record. In the circumstances of the case, we make no order as to costs of this reference.