

**(2002) 10 MAD CK 0108**

**Madras High Court**

**Case No:** Tax Case (Reference) No. 99 of 1998

Commissioner of Income Tax

APPELLANT

Vs

India Cements Ltd.

RESPONDENT

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**Date of Decision:** Oct. 28, 2002

**Acts Referred:**

- Income Tax Act, 1961 - Section 154, 43B

**Citation:** (2004) 265 ITR 479

**Hon'ble Judges:** N.V. Balasubramanian, J; K. Raviraja Pandian, J

**Bench:** Division Bench

**Advocate:** T. Ravikumar, for the Appellant; P.P.S. Janardhana Raja, for the Respondent

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### **Judgement**

N.V. Balasubramanian, J.

In compliance with the directions of this court in T. C. P. No. 142 of 1996 dated July 11, 1997, the Income Tax Appellate Tribunal has stated the case and referred the following question of law for our consideration :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the Assessing Officer was not justified in taking recourse to Section 154 to make disallowance u/s 43B of the sales tax collected by the assessee and was shown as outstanding liability as on March 31, 1984 ?"

2. The assessment year with which we are concerned is 1984-85. In the original assessment made by the Income Tax Officer, it was found that he did not make any disallowance u/s 43B of the Income Tax Act on certain amounts collected by way of deposits. Subsequently, the Income Tax Officer initiated proceedings u/s 154 of the Act on the ground that the deposits were collected towards the sales tax, if any, payable by the assessee on the freight and packing charges and he rectified the mistake in the order of assessment on the ground that the assessee by letter dated January 20, 1988, has agreed to the rectification. However, it was found as a matter of fact, both by the Commissioner of Income Tax (Appeals) as well as the Appellate

Tribunal, that the assessee had never agreed to the rectification and in fact, the assessee had objected to the rectification of the order of assessment proposed by the Income Tax Officer. The Commissioner of Income Tax as well as the Income Tax Appellate Tribunal found rectification proceedings were initiated with reference to an issue for which there is more than one view possible and hence it is a debatable issue. The question whether disallowance can be made when the amount was not shown in the profit and loss account and further the character of the receipt are also matters on which more than one view is possible. In other words it is the case wherein it cannot be said that only one view is possible on the facts ; as it is found as on fact that more than one view is possible and in view of the same, it cannot be said that there is a mistake apparent from the records which calls for the exercise of the power of rectification u/s 154 of the Income Tax Act. We hold that the Tribunal was justified in taking the view that there was no mistake apparent on the face of the record and the Income Tax Officer was not justified in taking the proceedings u/s 154 of the Act to disallow the allowance that was granted in the order of assessment. Consequently, we do not find any infirmity in the order of the Appellate Tribunal. In fairness, learned counsel for the Revenue has not seriously questioned the correctness of the order of the Income Tax Appellate Tribunal. Accordingly, we answer the question of law referred to us in the affirmative, in favour of the assessee and against the Revenue. However, in the circumstances of the case, there will be no order as to costs.