(2011) 04 MAD CK 0365

Madras High Court

Case No: Tax Case (Appeal) No. 106 of 2008

Commissioner of Income Tax	APPELLANT
Vs	
Haritha Seating Systems Ltd.	RESPONDENT

Date of Decision: April 9, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1961 - Section 143(3), 147, 148, 153, 154

Citation: (2011) 202 TAXMAN 402

Hon'ble Judges: M. Venugopal, J; Elipe Dharma Rao, J

Bench: Division Bench

Advocate: K. Subramanian, for the Appellant; R. Venkatanarayan, for Subbaraya Aiyer, for the Respondent

Final Decision: Dismissed

Judgement

Elipe Dharma Rao, J.

This Appeal is filed by the Revenue in respect of the assessment year 1997 - 98 against the order dated 29.11.2006 passed by the Income Tax Appellate Tribunal, "A" Bench, Chennai in I.T.A. No. 1663/Mds/05 and was admitted on the following substantial question of law:

Whether, in the facts and circumstances of the case, the Tribunal was right in holding that the issue as to whether the labour charges, miscellaneous income and sale of materials are part of business income or not for the purpose of deduction u/s 80HH is a debatable issue and the same cannot be decided in the rectification proceedings u/s 154.

2. The facts of the case culled out from the statement of facts filed by the Revenue goes as follows:

The Assessee is a Private Limited Company whose return for the assessment year 1997-1998 was processed u/s 143(3) of the Income Tax Act (hereinafter 3 referred to as the "Act"). As gathered from the facts and circumstances of the case, an Assessment Order, which is not filed in the typed set of papers, was passed against which an appeal was filed in ITA No. 80 of 2000, which was disposed of by the appellate authority Commissioner of Income Tax by order dated 20.9.2000, to revise as per Section 80HH of the Act. Accordingly, the Deputy Commissioner of Income Tax, Company Circle II, took the matter and passed an order dated 14.3.2002 deducting six items, viz., (1) PF employees contribution; (2) PF employers contribution; (3) Excise duty not added to furnished goods; (4) Leave salary now allowed; (5) Labour charges allowed and (6) Profession Tax now allowed. Originally, as per the Assessment Order dated 20.9.2000, the total income assessed was Rs. 3,19,27,380/- and, after excluding the above said income, it came to Rs. 3,10,85,920/-. Accordingly, the Deputy Commissioner of Income Tax came to the conclusion that the balance payable is Rs. 50,470/-. After passing this order, since an objection was taken by the Revenue audit, the Deputy Commissioner had once again taken the issue stating that deduction u/s 80HH of the Act on some 4 other incomes was wrongly allowed and since the same was required to be rectified, notice u/s 154 of the Act was given for rectification of the mistakes. Thereafter, after hearing the representative of the Assessee, the order dated 14.3.2002 was revised on 30.3.2004 against which an appeal was filed before the Commissioner of Income Tax, who, on consideration of the facts and circumstances of the case, by order dated 15.3.2005, passed the following order:

3.2. The rival submissions have been considered. The Appellant filed copies of CIT(A)''s order and the case law cited supra before me during the course of appellate proceedings and I have perused the same. The CIT(A)-VI, Chennai in its ITA No. 13/1999-2000 dated 1.10.1999 has decided the issue in favour of the Appellant. In his order, the CIT(A) has stated as under:

"I have found that the excess capacity of the industrial undertaking of the Appellant company was utilised by the Appellant in processing the raw materials brought in by the customers mainly group companies who did not have much facility, and for conversion of such raw materials, the Appellant received substantial labour charges.

Such labour charges / processing charges earned by the Appellant were directly derived from the industrial undertaking of the Appellant-company and therefore these have to be held as gains derived from the industrial undertaking. As a result of this finding, the Appellant-company would also be entitled to exemption u/s 80HH on the labour charges earned by it, provided the industrial undertaking of the Appellant-company accordingly.

3.2.1. In the case of CIT v. Tamil Nadu Heat Treatment & Felting Services Pvt. Ltd. 104 Taxman 210, Madras High Court has held that the business of receiving from clients untreated crank shafts, forgings, castings, etc. and subjecting them to heat

treatment, in order to toughen them to required standards, so that they could be sold in the market, is a manufacturing activity, entitling it to claim deduction as contemplated u/s 80HH and 80I.

3.2.2. Respectfully following the same, I direct the Assessing Officer to allow exemption u/s 80HH on the labour charges received by the Appellant. The Appellant succeeds on this issue.

Against the said order, an appeal was filed by the Deputy Commissioner of Income Tax before the Income Tax Appellate Tribunal. The Tribunal dismissed the appeal by order dated 29.11.2006 and the said order is impugned in this appeal.

3. Heard the argument of the learned Counsel on either side and perused the materials on record.

4. In the present case, the Assessing Officer, by invoking the suo motu power, after service of notice to the Assessee, passed an order revising the taxable income by modifying the deductions claimed by the Assessee u/s 80HH of the Act. On appeal, the Commissioner of Income Tax, allowed the appeal preferred by the Assessee and found that the deduction claimed under different heads by the Assesses are allowable. On further appeal, the Tribunal, on the question of jurisdiction to re-open the assessment on the ground of rectification of mistake, held that the restriction in the deduction u/s 80HH proposed by the Assessing Officer u/s 154 of the Act was not at all a mistake apparent from record and rather, it was quite debatable. Ultimately, the Tribunal dismissed the appeal on the ground of want of jurisdiction by the Assessing Officer.

5. On the aforesaid factual scenario, it has to be seen whether the Assessing Officer has rectified the mistake in view of Section 154 of the Act or decided the issue on merits.

6. We have perused the Revision order passed by the Assessing Officer. In the order, it was mentioned that deduction u/s 80HH on some other incomes was wrongly allowed and it was required to be rectified u/s 154 of the Act. It was further indicated that the original assessment order dated 14.3.2002 was revised after hearing the Assessee''s representative on 30.4.2004. Except the aforesaid facts, nothing has been indicated in the Revision Order. The Assessing Officer has not given any reason for revising the deduction amount claimed by the Assessee. In the absence of giving any reason for revising the order, we do not know as to on what ground the Assessing Officer had come to a conclusion that the deduction claimed by the Assessee does not fall under the purview of 80HH of the Act. If one examines the scheme of the Income Tax Act, as it stood at the material time, one finds a clear dichotomy between Section 154 and Section 147 of the Act. Section 154 deals with rectification of mistake. Section 154(1), inter alia, states that, with a view to rectify any mistake apparent from the record, an Income Tax Authority may amend any order passed by it under the provisions of the Act, whereas Section 147, inter alia,

states that if the Assessing Officer has reason to believe that any income charged to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income which has escaped assessment and which comes to the notice of the Assessing Officer subsequently in the course of proceedings under the said section.

7. It is well recognised law that any erroneous assessment cannot be the subject matter for rectification u/s 154 of the income tax Act. The erroneous order of assessment can be rectified only under procedure known to law by carrying the matter before the appropriate authority by way of appeal to rectify the erroneous order or revise it as per law. A debatable point cannot be a reason for rectification u/s 154. Further, in order to invoke Section 154 for rectification of the mistake, the mistake sought to be rectified should be a mistake apparent on the record and must be an obvious and patent mistake and not something which could be established by long drawn process of reasoning on the point in issue on which there may be conceivably two opinions. A decision on a debatable point of law cannot be regarded as a mistake apparent on the face of the record amenable for rectification u/s 154 of the income tax Act.

8. Insofar as the case on hand is concerned, it involves change of opinion. From a perusal of the record, it is clear that the original Assessment Order was passed by the Assessing Officer on 29.3.2000 and on appeal in ITA 80 of 2000, the Commissioner of Income Tax (Appeals), by order dated 20.9.2000, directed the Assessing Officer to exclude the income on certain heads u/s 80HH of the Act. The Assessing Officer instead of carrying the matter to the Tribunal by way of appeal, complied with the order of the Commissioner by passing the revised order dated 14.3.2002. When an objection was raised by the Revenue Audit, the Deputy Commissioner took up the matter stating that a mistake had occurred and accordingly, passed the order dated 30.3.2004 after issuance of notice u/s 154 of the Act. Therefore, merely because an objection was taken out by the Revenue Audit, the officer, who succeeded the previous officer should not have undertaken the exercise of revising the order issuing notice u/s 154 of the Act. Therefore, we are of the view that the revised order dated 30.3.2004 passed by the Assessing Officer is in violation of the order dated 20.9.2000 passed by the Commissioner of Income Tax.

9. Further, the assessing authority has no authority to revise the assessment order is the principle laid down by the Supreme Court in T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, . In the said case, the Supreme Court, after considering the fact that the mistake rectified was not an error or mistake apparent on the face of record, observed as follows:

5. .... 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 conceivably be two opinions. As seen earlier, the High Court of Bombay opined that the original assessments were in accordance with law

though in our opinion the High Court was not justified in going into that question. In Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, this Court while spelling out the scope of the power of a High Court under Article 226 of the Constitution ruled that an error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions cannot be said to be an error apparent on the face of the record. A decision on a debatable point of law is not a mistake apparent from the record-see Sidhramappa Andannappa Manvi Vs. Commissioner of Income Tax, Bombay, . The power of the officers mentioned in Section 154 of the Income Tax Act, 1961 to correct "any mistake apparent from the record" is undoubtedly not more than that of the High Court to entertain a writ petition on the basis of an "error apparent on the face of the record". In this case it is not necessary for us to spell out the distinction between the expressions "error apparent on the face of the record" and "mistake apparent from the record". But suffice it to say that the Income Tax Officer was wholly wrong in holding that there was a mistake apparent from the record of the assessments of the first Respondent.

10. The appellate authority while considering the appeal preferred against the order of revision passed by the Assessing Officer, on the facts of the case, has considered each and every head of deduction claimed by the Assessee and came to a definite conclusion that the Assessee is entitled for the deductions claimed u/s 80HH of the Act. The said finding of the appellate authority has also not been interfered with by the Tribunal.

11. In view of the above, in the light of the decision of the Supreme Court referred to above, we do not find any question of law, much less, substantial question of law, for entertaining this appeal and hence, we are not inclined to interfere with the concurrent finding arrived at both on the question of facts and question of law. Therefore, the Tax Case (Appeal)is dismissed.