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Madras High Court

Case No: Tax Case (Appeal) No. 403 of 2004

Commissioner of Income Tax	APPELLANT
Vs	
Lakshmi Vilas Bank	RESPONDENT

Date of Decision: Dec. 18, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 1
- Income Tax Act, 1961 - Section 154, 154(1), 154(1A), 254(1), 254(2)

Citation: (2010) 230 CTR 185 : (2010) 329 ITR 591

Hon'ble Judges: M.M. Sundresh, J; K. Raviraja Pandian, J

Bench: Division Bench

Advocate: K. Subramanlam, for the Appellant; R. Venkatanarayanan, for Subbaraya Aiyar, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Sundresh, J.
The Revenue has come on appeal against the order passed by the Tribunal, Madras "B" Bench in ITA No. 1689/Coch/1994, dt. 20th Jan., 2003 for the asst. yr. 1983-84 by raising the following substantial questions of law as well as the additional substantial question of law:

(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the interest amount can be allowed as the bad debt by an order of rectification u/s 154 of the IT Act, 1961 on the ground of "mistake apparent on record" when the assessee has not claimed it at the time of the original assessment ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the issue of bad debt is allowable by the order of the rectification u/s 154 on the ground that the issue is not debatable ?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee"s petition u/s 154, dt. 11th Aug., 1989 claiming deduction for an additional amount of Rs. 15,85,017 as bad debts should be allowed overlooking the clear provisions of Section 154(1A) as per which the AO could not rectify an order on a matter which had been the subject-matter of appeal before the CIT(A) and when the appellate order had been passed on 15th July, 1987 ?

2. The facts of the case in a nutshell are as follows.

3.1 For the asst. yr. 1983-84, an order of assessment was passed by the AO disallowing the deductions sought for by the assessee towards the bad debts for a sum of Rs. 51,19,096 and also the interest for a sum of Rs. 15,85,017. The assessee has sought deduction for the above said amount of Rs. 51,19,096 out of the total amount of Rs. 66,82,375 which is inclusive of the interest amount of Rs. 15,85,017 kept by the assessee in the suspense account. The assessee has been following the mercantile system of accounting and the interest has been accounted on accrual basis. Since the assessee has been disputing that the interest is not exigible to tax he has not included the said amount in the bad debts claimed by the assessee. The appeal filed by the assessee against the order of the AO rejecting the claim for bad debt was allowed by the first appellate authority and the same was confirmed by the Tribunal.

3.2 The first appellate authority while allowing the appeal in part has observed that the assessee might claim the entire interest as bad debt at a later stage when no recovery is possible. The said observation was made while rejecting the contention of the assessee that the interest kept in the suspense account cannot be bought to tax. Accordingly, the interest kept in the suspense account was bought to tax. However in view of the observation made by the first appellate authority, the assessee filed an application for rectification on 11th Aug., 1989 which is after the order passed by the first appellate authority on 15th July, 1987. Thereafter, the Revenue filed a further appeal challenging the order of the first appellate authority allowing the bad debts and the Tribunal also fell in line with the first appellate authority by dismissing the same.

3.3 The AO rejected the application filed by the assessee u/s 154 of the IT Act seeking rectification of the assessment order by holding that there is no mistake apparent from the record. In the further appeal filed, the first appellate authority has confirmed the order of the AO by holding that there is no mistake apparent from the record, since the assessee had claimed allowance of bad debts for a sum of Rs. 50,97,358 only on the earlier proceedings. However, the Tribunal on further appeal made by the assessee has come to the conclusion that when the net amount of Rs. 50,97,358 was allowed as a deduction for bad debts, the gross amount of Rs. 66,82,375 including the interest of Rs. 15,85,017 ought to be allowed.

3.4 The Tribunal further held that a duty is cast upon the AO to pass an order for the entire gross amount in view of the earlier orders passed by the first appellate authority as

confirmed by the Tribunal treating the net amount as bad debts and the failure to rectify the said mistake the power u/s 154 of the IT Act, 1961 ought to have been exercised by the AO and accordingly allowed the appeal filed by the assessee by directing the AO to give deduction for the gross amount of Rs. 66,82,375. Not being satisfied with the said order, the Revenue has filed the present appeal.

4. Contentions of the learned Counsel appearing for the Revenue.

4.1 Shri K. Subramaniam, learned senior counsel appearing for the Revenue submitted that there is no mistake apparent from the record and therefore the Tribunal has committed a mistake in allowing the appeal filed by the assessee. It is the further submission of the learned Counsel that the assessee having not included the entire gross amount in the earlier claim, he cannot be allowed to include the same by way of an application u/s 154 invoking the power of rectification. The failure of the assessee in not agitating the claim earlier would amount to a merger with the earlier orders which have become final.

4.2 He further contended that the definition of the word "records" employed u/s 154 does not include previous records and therefore the application filed u/s 154 ought to have been rejected by the Tribunal. In support of his contentions, the learned Counsel has relied upon the judgments reported in Commissioner of Income Tax (CNTL), Ludhiana Vs. Hero Cycles Pvt. Ltd., Ludhiana, , Commissioner of Income Tax Vs. M.R.M. Plantations (P.) Ltd., , The Commissioner of Income Tax Vs. Wajid Sons (P) Ltd., and Utkal Galvanizers P. Ltd. Vs. Assistant Commissioner of Income Tax and Another, and contended that the power u/s 154 cannot be invoked in the present case on hand.

5. Submissions of the learned Counsel appearing for the assessee.

5.1 Shri R. Venkatanarayanan learned Counsel for M/s Subbaraya Aiyar appearing for the assessee submitted that the power u/s 154 can be exercised, when a duty is cast upon the AO to rectify a mistake which is apparent on the face of the record. In this case, the order passed by the Tribunal earlier by allowing the bad debts having become final, the same will have to be applied to the accrued interest as well. Further the entire gross amount could not be claimed earlier towards bad debts, since it was agitated by the assessee that the interest kept in the suspense account was not amenable to tax. In support of his contention, the learned Counsel has relied upon the judgment of the Hon"ble apex Court reported in T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, and submitted that the order of the Tribunal does not warrant any interference.

6. We have heard the learned Counsel appearing for the Revenue as well as the assessee.

7. As submitted by the learned Counsel appearing for the assessee what is sought to be rectified is the amount left out earlier which was kept in the suspense account. Therefore,

the entire gross amount has not been claimed as bad debts on the earlier occasion, since the interest was kept in the suspense account. Hence when the authorities have held that the net amount was not liable to be taxed and therefore allowed as bad debt, the same will have to be made applicable to the entire gross amount as well. Admittedly, the assessee has been following the mercantile system of accounting and the interest has been kept in the suspense account on accrual basis. Further, a duty is cast upon the AO to declare the entire gross amount as bad debts in view of the orders passed by the higher authorities in the earlier round of litigation. The circular by the CBDT in Circular No. 14, dt. 11th April, 1955 clearly states that a duty is cast upon the officers of the Department to assist a taxpayer in every reasonable way and particularly in the matter of claiming and securing reliefs by guiding the. taxpayer for making a correct assessment.

8. The assessee has filed the application u/s 154 of the IT Act, 1961 only after the orders passed by the first appellate authority on 15th July, 1987 wherein it was observed while rejecting the contention of the assessee that the interest kept in the suspense account is not exigible to tax, that the assessee could take appropriate steps at the appropriate time in respect of the interest kept in suspense account. It is also not in dispute that the assessee has filed an application u/s 154 after the orders passed by the first appellate authority. Therefore the contention of the learned Counsel appearing for the Revenue that an issue which was available earlier cannot be permitted to be taken subsequently cannot be accepted. The power u/s 154 can be exercised when an issue was not decided earlier by the first appellate authority and since in the present case on hand, the issue raised u/s 154 was not decided earlier there is no bar in law for the assessee in filing the application for rectification under the said section.

9. The contention of the learned Counsel appearing for the Revenue that by the doctrine of merger the assessee"s application is liable to be dismissed also cannot be accepted, since on facts it is clear in the present case that the doctrine of merger does not have any application. As observed earlier, the issue raised in the rectification application seeking the declaration of bad debts for the gross amount was not raised and decided earlier.

10. The expression used in Section 154 of the IT Act regarding the mistake apparent from the record will have to be construed to be a mistake which is very clear, distinct and apparent. The said mistake should be manifest and could be identified by a mere look and which does not need a long drawn out process of reasoning. It is no doubt true that a mere mistake by itself cannot be a ground to invoke Section 154 of the IT Act, 1961. It is also true that an issue which is debatable also cannot be decided u/s 154. However when the mistake is glaring and in a case where facts are not in dispute then the said mistake being one apparent on the fact of the record will have to be rectified u/s 154.

11. The scope of Section 254(2) which is analogous to Section 154 of the Act has been considered in extenso very recently by this Court in Writ Petn. No. 3919 of 2001, dt. 17th Nov., 2001 (sic-2009) Express Newspapers Ltd. v. Dy. CIT and Anr. (judgment delivered by K. Raviraja Pandian, J.) [reported at Express Newspapers Limited Vs. The Deputy

Commissioner of Income Tax Special Range and Income Tax Appellate Tribunal,] has observed as follows:

9. The scope and amplitude of Section 254(2) and the analogous provision Section 154 of the Act have been considered by catena of decisions of the apex Court and other High Courts. The uniform opinion of the Courts of superior jurisdiction is that a patent, manifest and self-evident error which does not require elaborate discussion of evidence or argument to establish it, can be said to be an error apparent on the face of the record and can be corrected u/s 254(2). An error cannot be said to be apparent on the face of the record if one has to travel beyond the record to see whether the judgment is correct or not. An error apparent on the record means an error which strikes one on mere looking and does not need a long drawn out process of reasoning on points on which there may be conceivably two opinions. The error should not require any extraneous matter to show its incorrectness. To put it differently, it should be so manifest and clear that no Court would permit it to remain on record. If the view accepted by the Court in the original judgment is one of possible views, the case cannot be said to be covered by an error apparent on the face of the record. Section 254(2) specifically empowers the Tribunal to amend at any time within four years from the date of an order, any order passed by it u/s 254(1) with a view to rectify any mistake apparent from the record either suo motu or on an application. In order to attract the application of Section 254(2), the mistake must exist and the same must be apparent from the record. The expression "mistake apparent from the records" contained in Sections 154 and 254(2) has wider content than the expression "error apparent on the face of the record occurring in order 47 Rule 1 of CPC. The restrictions on the power of review under Order 47 Rule 1 of CPC do not hold good in the cases of Sections 254(2) and 154 of the Act. Section 254(2) does not confer power on the Tribunal to review its earlier order. Under the garb of rectification of mistake it is not possible for a party to take further chance of rearguing the appeal already decided. What can be rectified u/s 254(2) is a mistake which is apparent and patent. The mistake has to be such for which no elaborate reasons or enquiry is necessary. Where two opinions are possible then it cannot be said to be a mistake apparent on the record. When prejudice resulting from an order is attributable to the Tribunal"s mistake, Error or omission, it is its bounden duty to set it right. The purpose behind the enactment of Section 254(2) of the Act to amend any order passed under Sub-section (1), if any mistake apparent from the records is brought to the notice of the Tribunal, is based on the fundamental principle that no party appearing before the Tribunal, be it an assessee or the Department, should suffer on account of any mistake committed by the Tribunal. This fundamental principle has nothing to do with the inherent power of the Tribunal. If prejudice is resulted to the party, which prejudice is attributable to the Tribunal"s mistake, error or omission and which error is a manifest error, then the Tribunal would be justified in rectifying its mistake. Rectification can be made only when a glaring mistake of fact or law committed by the officer passing the order becomes apparent from the record. The rectification is not possible if the question is debatable. A point which was not examined on facts or in law cannot be dealt with as a mistake apparent from the record. No error can be said to be

apparent on the face of the record if it is not manifest or self evident and requires an examination or argument to establish it. Where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, is a clear case of error apparent on the face of the record.

12. In the judgment reported in CIT v. Hero Cycles (P) Ltd. (supra), the Hon"ble apex Court was pleased to hold that a rectification u/s 154 can only be made when there is a glaring mistake of fact or law committed by the officer passing the order becomes apparent from the record. In the said case the issue was the consideration of the granting of weighted deduction u/s 35B of the Act. The Hon"ble apex Court was pleased to observe that the said issue being a debatable issue the same cannot be gone into u/s 154 of the IT Act, 1961. In view of the fact that the facts involved in the said case are being totally different, the judgment rendered by the Hon"ble apex Court is not applicable to the present case on hand wherein there is no dispute on facts and there is no debatable issue involved.

13. In the judgment reported in Utkal Galvanizers (P) Ltd. v. Asstt. CIT and Anr. (supra) the issue of merger was considered by the Division Bench of the Orissa High Court. In the said case, the issue which was decided earlier before the appellate authority was sought to be raised again before the AO by invoking Section 154. Therefore under those circumstances, the Division Bench of the Orissa High Court was pleased to hold that when an issue was already decided then permitting the said issue to be raised again u/s 154 would lead to judicial anarchy. In this connection, it is useful to refer the judgment reported in Commissioner of Income Tax, Tamil Nadu-IV, Madras Vs. Sundaram Textiles Limited, wherein the Tax Bench of this High Court was pleased to hold that only in a case where a particular item is dealt with in the appeal, the ITO is precluded from dealing with the said item by invoking Section 154. Therefore, the said judgment relied upon by the learned Counsel appearing for the Revenue is also not applicable to the present case on hand.

14. The other judgment in CIT v. Wajid Sons (P) Ltd. (supra) relied upon by the learned Counsel appearing for the Revenue also does not come to his aid. In the said case, the application u/s 154 was filed by the assessee on the ground that for the earlier year, the assessee was treated as an industrial company and therefore the same will have to be followed for the subsequent year. The Division Bench was pleased to hold that merely because the assessee was treated as an industrial company for the earlier year by itself cannot be a ground to hold that the same should be made applicable by all force to the subsequent year, since the assessment for every year will have to be decided based upon the evidence available on record for that year.

15. In the judgment reported in Commissioner of Income Tax Vs. Y.K. Shoji Stone Indo (P) Ltd., (in which one of us is a party, K. Raviraja Pandian, J.) it has been observed as follows:

It is well recognised law that any erroneous assessment cannot be the subject-matter for rectification u/s 154 of the IT Act. The erroneous order of assessment can be rectified only under procedure known to law by carrying the matter before the appropriate authority 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 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 IT Act. Useful reference can be had to the judgments of T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, and Commissioner of Income Tax (CNTL), Ludhiana Vs. Hero Cycles Pvt. Ltd., Ludhiana, . Hence, we do not find any question of law, much less, substantial question of law, for entertaining this appeal as the issue has already been covered by the decisions of the Supreme Court. Therefore, the tax case (appeal) is dismissed.

16. This Court on the facts of the said case was pleased to observe that the issue involved in the said case being a debatable issue, the same cannot be decided by invoking the power u/s 154 of the IT Act. As observed earlier in the present case on hand, there is no debatable issue and the facts are not in dispute. Therefore the application filed by the assessee u/s 154 seeking rectification is perfectly in order. The Hon"ble apex Court in T.S. Balaram, ITO v. Volkart Bros. and Ors. (supra) held the very same view and observed that an issue which is debatable cannot be decided u/s 154, which is not the situation in the present case.

17. The submissions of the learned Counsel appearing for the Revenue that the definition of "mistake apparent from the record should not be construed to mean any record also cannot be countenanced. The word "record" has not been defined u/s 154 or in the definition section. Therefore the said word will have to be given a wider import by including the record that is available with the AO. In this case, the records pertaining to the order allowing the bad debts to the net amount for a sum of Rs. 50,97,358 are available with the AO in the form of earlier proceedings and therefore the contention of the learned Counsel appearing for the Revenue cannot be accepted. The judgment relied upon by the learned Counsel appearing for the Revenue reported in CIT v. M.R.M. Plantations (P) Ltd. (supra) in fact supports the case of the assessee. In the said judgment, the Hon"ble Division Bench was pleased to observe that the word "record" as mentioned u/s 154 will have to be given a wide meaning. The Hon"ble Division Bench has observed as follows:

Section 154 of the Act opens with the words "with a view to rectifying any mistake apparent from the record ..." The term "record" as noticed earlier is not defined in the section or in the definition section of the Act. For determining the true scope of this provision and the meaning to be properly assigned to the term "record" it is necessary to

keep in view the object of the provision and the nature of the power conferred on the authorities under that provision. These are the criteria which the Supreme Court adopted while considering the scope and effect of Section 263 of the Act and the meaning to be assigned to the word "record" used in that provision, in the case of CIT v. Shree Manjunathesware Packing Products & Camphor Works (1997) 143 CTR 406 v: (1998) 231 ITR 53 (SC). The object with which power is conferred by Section 154 is as stated in the marginal heading "rectification of mistake". The principal condition for exercising the power u/s 154 of the Act is the existence of a mistake in the record. The mistake is not to be a mistake which requires in-depth probing to discover, but is a mistake which is "apparent" from the record. The power conferred by this provision is only to enable the authorities to rectify the "apparent" mistakes in the record. The record referred to is the record which the authorities are required to examine for the purpose of rectifying the mistakes in the orders mentioned in Clauses (a), (b) and (c) of Section 154(1) of the Act. The section does not either expressly or implicitly require that the authorities exercising power under this provision should limit their attention only to the order sought to be rectified.

The requirement that the mistake in the record be "apparent" does not imply that no other relevant document should be looked into. If in the light of other legally valid orders it is found that the original order contains mistakes which are apparent, the rectification of such mistakes is not barred u/s 154. The object of the provision is the rectification of mistakes in the record and that object is ill served if the authorities are compelled to preserve such mistakes in the order by asking them to wear blinkers and not look into relevant unimpeachable material such as the rectified order of assessment for the period preceding the assessment year in the light of which mistakes in the order sought to be rectified are apparent.

It is neither necessary nor possible to set out exhaustively all the material that can possibly be regarded as forming part of the "record" for the purpose of examination u/s 154(1) of the Act. On the facts of this case, the order of assessment for the immediately preceding year which was rectified was undoubtedly a part of the record which was available for examination by the ITO for the purpose of deciding as to whether there was a mistake apparent on the face of the record in the order of assessment for the immediately succeeding year, namely, the asst. yr. 1974-75. More so, as the figures of unabsorbed depreciation considered in the assessment for the asst. yr. 1974-75 were the figures which the officers were required to obtain from the assessment order of the previous year and the two assessment orders to that extent were inter-linked. After the rectification of the assessment order for the asst. yr. 1973-74 no amount towards unabsorbed depreciation was available for being adjusted in the asst. yr. 1974-75. The set off allowed on the original assessment order for that year was an apparent mistake which was rectifiable u/s 154.

It is no doubt true as submitted by learned Counsel for the assessee that even an erroneous order may be given effect to if it is not rectified within the time allowed by law.

However, such order cannot be regarded as having become final until the expiry of the period available for such rectification.

Learned counsel for the assessee submitted that unlike Section 263, Section 154 of the Act does not contain the definition of the word ''record''. The absence of the definition, however, cannot have the consequence of limiting its meaning to a very narrow and limited sphere of the record of the original proceedings alone. The period of four years prescribed in the section for initiating rectification proceedings is meant to protect the assessee against unduly delayed proceedings for rectification, as also to enable the authorities to have sufficient time within which to give effect to the consequence of any orders which may be rectified or revised or modified when they have a direct bearing upon the assessment order sought to be rectified u/s 154(1) of the Act. Such orders would form part of the record which is available for scrutiny by the officers exercising powers u/s 154 of the Act. The record for the purpose of Section 154(1) is the record available to the authorities at the time of initiation of proceedings for rectification and not merely the record of the original proceeding sough to be rectified.

The Supreme Court in the case of CIT v. Shree Manjunathesware Packing Products & Camphor Works (supra) has held that ''record'' in Section 263 of the Act means the record before the CIT at the time of the exercise of the power of revision. For reaching that conclusion, the Court did not rely only on the definition of the word ''record'' which had been introduced in Section 263 as is evident from the following observations of the Court (headnote):

It cannot be said that the correct and settled legal position, with respect to the meaning of the word ''record'' till 1st June, 1988, is that it meant the record which was available to the ITO at the time of passing of the assessment order. Such a narrow interpretation of the word ''record'' is not justified in view of the object of the provision and the nature and scope of the power conferred upon the CIT.

Those observations are equally applicable to the interpretation of the term ''record'' in Section 154 of the Act.

Therefore, we are also of the view that the contention of the learned Counsel appearing for the Revenue cannot be accepted.

18. Hence on a consideration of the entire facts and law involved, we are of the opinion that the substantial questions of law raised by the Revenue will have to be answered in the affirmative and against the Revenue and accordingly answered against the Revenue. Consequently, the appeal is dismissed. No costs.