

(2008) 12 PAT CK 0051

Patna High Court

Case No: Misc. Appeal No's. 112 and 116 of 2002

Commissioner of
Income Tax Patna and
Others

APPELLANT

Vs

M/s Bihar State
Co-operative Bank
Limited, Patna

RESPONDENT

Date of Decision: Dec. 5, 2008

Acts Referred:

- Income Tax Act, 1961 - Section 143(1)(d), 143(3), 144, 147, 154

Citation: (2009) 2 PLJR 702

Hon'ble Judges: Ravi Ranjan, J; Chandramauli Kr. Pd., J

Bench: Division Bench

Advocate: Archana Sinha, for the Appellant; K.N. Jain, for the Respondent

Final Decision: Dismissed

Judgement

Prasad & Ranjan, JJ.

Both the appeals arise out of same order and they are being disposed off by this common judgment. Commissioner of income tax, aggrieved by the order dated 1st October, 2001 passed by the income tax, Appellate Tribunal in ITA No. 163(Pat)/2001, affirming the order dated 2.2.2000 passed by the Commissioner of income tax in ITA No. 444/P/A-II/99-2000, has preferred this appeal u/s 260A of the income tax Act.

2. Short facts giving rise to the present appeal are that an intimation u/s 143(1)(d) of the Income Tax Act was sent to the assessee Bihar State Cooperative Bank Limited showing refund of Rs. 44,06,275/-. However the refund voucher was not issued. Thereafter a proceeding in terms of Section 147 of the Income Tax Act, hereinafter referred to as the Act, was initiated to assess income chargeable to tax. By order dated 24.3.1992 order of assessment u/s 144 of the Act was passed creating demand of Rs. 43,19,412/-. However

while doing it no credit was given to the tax deducted at source (TDS) and deposited. Later on 31.3.1992 rectification order u/s 154 of the Act was issued showing demand of Rs. 20,506/- giving credit to the tax deducted at source of Rs. 45,09,626/-. Assessee carried the matter in appeal before the Commissioner of Income Tax (Appeal) who by order dated 17.2.1993 set aside the order of rectification dated 31.3.1992. Thereafter assessment order u/s 143(3) of the Act was passed on 9.2.1995 raising demand of Rs. 20,506/-. Commissioner of Income Tax, in exercise of the power u/s 264 of the Act set aside the assessment order dated 9.2.1995, inter alia, observing to take steps u/s 147 of the Act.

3. Thereafter after about lapse of two years on 12.7.1997 notice u/s 147 of the Act was issued to the assessee and ultimately by order dated 26.2.1999 a sum of Rs. 1,80,63,211/- was found refundable. It included a sum of Rs. 1,03,43,890/- as interest u/s 244A of the Act. On 5.8.1999 notice u/s 154 of the Act was served on the assessee seeking rectification of the interest of the aforesaid amount and ultimately by order dated 5.10.1999 the Assessing Officer held that delay being attributable to the assessee, in view of Section 244A(2) of the Act, it shall not be entitled for interest u/s 244A of the Act.

4. Aggrieved by the same, assessee preferred appeal and the Commissioner of Income Tax (Appeal) by order dated 2.2.2000 allowed the appeal and directed the Assessing Officer not to withdraw the interest granted u/s 244A of the Act. While doing so the Commissioner observed as follows:-

I have carefully considered the above submissions. The withdrawal of interest allowed u/s 244A cannot be done in the rectification petition u/s 154 since it is not a mistake apparent from the record as held by the Delhi High Court in the case of [Commissioner of Income Tax Vs. M/s. M.M.T.C. LTD.](#), . Following the above decision the JC to IT is directed not to withdraw the interest u/s 244A.

5. The order of the Commissioner was tested by the Revenue before the Patna Bench of the income tax Tribunal, hereinafter referred to as the Tribunal. The Tribunal dismissed the appeal, inter alia, observing as follows:-

The power of rectification can be exercised only, if there is a mistake apparent from record. In other words, in order to attract the power to rectify as contemplated u/s 154 of the Act, it is not sufficient, if there is merely a mistake in the order sought to be rectified. The mistake to be rectified must be one apparent from record. Provisions of Section 154 of the Act has limited application. These provisions do not enable an order to be reversed by revision or by review, but permit only some error which is apparent on the face of the record, should be one which is not an error which depends for its discovery on elaborate arguments on question of facts or law. An error which could be discovered by a complicated process of investigation, argument or proof, does not fall within the ambit of an error apparent on the face of record.

6. Aggrieved by the same, Revenue has preferred this appeal and by order dated 14.9.2006 the appeal has been admitted on the following substantial question of law:-

Whether withdrawal of interest which had accrued to the respondent on the strength of the provision of Section 244A of the Income Tax Act is within the purview of rectification proceedings u/s 154 of the Act?

7. Mrs. Archana Sinha, appearing on behalf of the appellants submits that in view of Section 244A(2) of the Act the reason for delay being attributable to the assessee it shall not be entitled for interest u/s 244A(1) of the Act.

8. Mr.. K.N. Jain, Senior Advocate, appearing on behalf of the Assessee referred to the aforesaid fact and contended that delay is not attributable to the assessee. He submits that from the date of the assessment order dated 27.3.1991 till 12.3.1997 nothing was done by the assessee so as to come to the conclusion that delay was attributable to it. In any view of the matter, he points out that it is absolutely debatable as to whether the delay is attributable to assessee or not and this question is required to be decided by process of reasoning hence it cannot be adjudicated u/s 154 of the Act.

9. Submission of Mr. Jain commends us. It is well settled principle, hallowed by time and sanctified by precedent that a debatable point of law is not a mistake apparent from the record. If one has to come to a decision after a process of reasoning, it becomes a debatable point of law and once it is held so it cannot be said to be a mistake apparent from the record. The view which we have taken finds support from the decision of the Supreme Court in the case of [T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay](#), , in which it has been observed as follows:-

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 vs. Mallikarjun 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.

10. In view of what we have observed above, we are of the opinion that withdrawal of interest was not admissible in exercise of the power of rectification u/s 154 of the Act. The substantial question of law thus formulated is answered in favour of the assessee and against the Revenue accordingly. In the result, we do not find any merit in the appeal and it is dismissed accordingly but without any order as to cost.