COMMISSIONER OF INCOME TAX Vs RAMLAL RAJGARHIA.

Court: Calcutta High Court

Date of Decision: April 30, 1990

Citation: (1992) 104 CTR 403 : (1993) 70 TAXMAN 173

Hon'ble Judges: Suhas Chandra Sen, J; Bhagabati Prasad Banerjee, J

Bench: Full Bench

Judgement

@JUDGMENTTAG-ORDER

BHAGABATI PRASAD BANERJEE, J. :

The Tribunal has forwarded the following question of law to this Court under s. 256(2) of the IT Act, 1961 :

Whether, on the facts and in the circumstances of the case, there was any mistake apparent from the record within the meaning of s. 254(2) of the

IT Act in the Tribunals order on ITA No. 849(Cal) of 1981, dt. 24th September, 1982, which could be rectified by the Tribunal by its subsequent

order ?

2. The assessment year involved is 1977-78.

3. In this case the Tribunal allowed the appeal of the Revenue by observing as under :

We have heard the rival submissions and considered the facts of the case. The insertion of s. 80AB by the Finance (No. 2) Act, 1980 with

retrospective effect from 1st August, 1968 has made it clear that ""where any deduction is required to be made or allowed under any section

(except s. 80M) included in this Chapter under the heading ""C-Deductions in respect of certain income"" in respect of any income of the nature

specified in that section which is included in the gross total income of the assessee, then, notwithstanding anything contained in that section, for the

purpose of computing the deduction under that section, the amount of income of the nature as computed in accordance with the provisions of this

Act (before making any deduction under this Chapter) shall alone be deemed to be the amount of income of that nature which is derived or

received by the assessee and which is included in his gross total income"". In view of this new provision, we are of the opinion that the cases relied

on by the assessees counsel do not help the assessee and the deduction under s. 80T is to be allowed in the amount of capital gain which is

included in the assessees gross total income. We, therefore, reverse the order of the AAC and uphold the action of the ITO on this point.

4. Thereafter an application was filed as Miscellaneous Application requesting the Tribunal to rectify the said order under s. 254(2) of the IT Act.

The Tribunal allowed the said application and accordingly changed paragraphs 5 and 7 of the original order dt. 24th September, 1982, in the

following manner :

We have heard the rival submissions and considered the facts of the case. We are unable to concede to the submission of the learned

departmental representative that the provisions of s. 80AB were applicable to the facts of the present case, inasmuch as, we find that s. 80AB was

inserted by the Finance (No. 2) Act, 1980, w.e.f. 1st April, 1981, without having any retrospective effect. On the other hand, we see that the

decision of the Madras High Court in the case of Commissioner of Income Tax Vs. V. Venkatachalam, is a direct authority on the point at issue

wherein it has been held that relief under s. 80T will have to be worked out in the gross amount of capital gain. Respectfully following the aforesaid

decision of the Madras High Court, we uphold the order of the AAC on this point.

In the result, the appeal is allowed.

5. The question whether relief under s. 80T will have to be worked at in the gross amount of capital gain or the amount is highly debatable question

and involves an interpretation of the section. Sec. 254(2) of the IT Act provides as under :

The Appellate Tribunal may, at any time within four years from the date of the order with a view to rectifying any mistake apparent from the

record, amend any order passed by it under sub-s. (1) and shall make such amendment if the mistake is brought to its notice by the assessee or the

ITO.

6. In this particular case, the Tribunal has entered into the merits of the case and the rights and contentions of the parties. This is not a case where

the Tribunal has exercised the power by rectifying the mistake apparent on the face of the record. The power under s. 254(2) of the Act is only for

the purpose of rectifying the mistake and as such, the Tribunal was wrong by invoking s. 254(2) of the Act in the facts and circumstances of the

case.

7. Accordingly, this question of law is answered in the negative and in favour of the Revenue.

There will be no order as to costs.

SUHAS CHANDRA SEN, J. :

I agree.