Commissioner of Income Tax Vs Simplex Concrete Piles (India) Pvt. Ltd.

Court: Calcutta High Court

Date of Decision: Jan. 27, 1978

Acts Referred: Income Tax Act, 1961 â€" Section 154

Citation: (1978) 112 ITR 812

Hon'ble Judges: Dipak Kumar Sen, J; C.K. Banerji, J

Bench: Division Bench

Advocate: B.L. Pal and Ajit Sengupta, for the Appellant;D. Pal and A.K. Roy Chowdhury, for the Respondent

Judgement

Sen, J.
In the present reference at the instance of the Commissioner of Income Tax, West Bengal-I, Calcutta, u/s 256(2) of the Income

Tax Act, 1961, this court directed the Tribunal to state a case on the following question :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that there was a clear mistake apparent from the

record within the meaning of Section 154 of the Income Tax Act, 1961, and in directing the Income Tax Officer on that basis to recompute the tax

according to the provisions of law laid down in the Finance Act, 1964 ?

2. The facts found and/or admitted in these proceedings are, inter alia, as follows. Messrs. Simplex Concrete Piles (India) Pvt. Ltd., the assessee,

was assessed to Income Tax in the assessment yaar 1964-65 when its total income was assessed at Rs. 5,51,919. On appeal, this amount was

reduced to Rs. 4,38,478. Thereupon, the assessee claimed that since it was engaged in the business of manufacture and/or processing concrete

piles and since its total income for the said assessment year was below Rs. 5 lakhs it was entitled to relief under the provisions of Paragraph D of

Part II of the First Schedule to the Finance Act, 1964, and its income should be charged to tax at the reduced rate as provided in the said Act.

The assessee contended that by reason of the order of the Appellate Assistant Commissioner reducing the total income of the assessee below Rs.

5 lakhs a mistake had become apparent from the record in not allowing the relief which the assessee was entitled to and that the said mistake

should be rectified by an order u/s 154 of the Income Tax Act, 1961.

3. The Income Tax Officer rejected the assessee"s claim for rectification. Being aggrieved the assessee preferred an appeal to the Appellate

Assistant Commissioner who held that the assessee was itself a contractor and erection of piles constituted an essential ingredient of the contracts

undertaken by the assessee and such construction could not be treated as a manufacturing activity. The appeal of the assessee was accordingly

rejected.

4. The assessee went up by way of further appeal to the Income Tax Appellate Tribunal. Before the Tribunal, it was contended on behalf of the

assessee that the activity of the assessee constituted manufacture of goods and nothing else. It was submitted that the piles were manufactured by

pouring into a steel cage the raw materials, namely, sand, gravel stone chips and cement mixed mechanically. The decision of the Madras High

Court in the case of Commissioner of Income Tax, Madras Vs. M.R. Gopal, was cited for the definition of manufacture.

5. It was contended on behalf of the revenue that the piles made by the assessee were not goods and, therefore, there could not be any

manufacture.

6. The Tribunal noted that the only point for consideration was whether there was a mistake apparent from the record. The Tribunal considered the

meaning of the word "" pile "" from the Concise Oxford Dictionary as follows :

Pointed stake or post; heavy beam driven vertically into bed of river, soft ground, etc., as support for bridge, etc.

7. The Tribunal found that in certain cases the assessee constructed the piles at the work site itself and in other cases piles were made separately

and then taken to the site and driven into the ground. From the letter of the assessee dated the 7th July, 1965, filed by the assessee before the

Income Tax Officer prior to the order of assessment the Tribunal noted that the assessee was carrying on a special type of job, namely, doing

foundation work of concrete piers for mobile sand pump at the Port of Nagapattinam. The work consisted of casting piles on the ground and

thereafter taking them to the deep sea to be driven on the bed.

8. Relying on the definition of the expression "" manufacture "" as laid down by the Madras High Court in the case of Commissioner of Income Tax,

Madras Vs. M.R. Gopal, , the Tribunal held that the assessee was undoubtedly engaged in the manufacture of goods and as such there was a

mistake apparent from the records. The Tribunal allowed the appeal of the assessee directing the Income Tax Officer to recompute the tax with

reference to the provisions of the Finance Act, 1964.

9. Mr. B. L. Pal, learned counsel for the revenue, has contended before us that, in the facts and circumstances, the order of the Tribunal was

patently erroneous inasmuch as there was no mistake which was apparent from the record. He submitted that, mistake, if any, had to be

discovered by a detailed investigation of the facts and circumstances which the Tribunal did. He submitted that it was settled law that in a case

where two views were possible one view should not be preferred to the other to establish that there was a mistake apparent. In support of his

contentions he relied on a decision of the Supreme Court in the case of T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs.

Volkart Brothers, Bombay, . In this case, the Supreme Court considered what was a "" mistake apparent on the record "". The Supreme Court

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 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 ''.

10. Dr. Debi Pal, learned counsel for the assessee, on the other hand, contended that in the instant case, the Tribunal found as a fact that the

assessee was carrying on a process of manufacture. This finding has not been challenged and, therefore, the conclusion was inescapable that there

was a mistake apparent from the record and the Tribunal''s order must be sustained. In support of his contentions Dr. Pal has pitted several

decisions as considered hereafter in their chronological order.

(a) Maharana Mills (Private) Ltd. Vs. Income Tax Officer, Porbandar, . Here the Supreme Court laid down that a mistake contemplated u/s 35 of

the Indian Income Tax Act, 1922, is undoubtedly not one to be discovered as a result of an argument but it was open to the Income Tax Officer to

examine the record including evidence and if he discovers any mistake he can proceed to rectify it by following the procedure laid down in the

section"". If necessary the Income Tax Officer could travel to the records of the earlier assessment to detect an initial mistake which might have

been followed and might have resulted in.

(b) Mahendra Mills Ltd. Vs. P.B. Desai, Appellate Assistant Commissioner of Income Tax and Another, . In this case, the Supreme Court again

considered the meaning of the words "" apparent from the record "" in Section 35 of the Indian Income Tax Act, 1922, and held that the expression

record"" did not refer only to the order of assessment but included all proceedings on which the assessment order was based and that the Income

Tax Officer would be entitled to look into the whole evidence for the purpose of exercising his jurisdiction u/s 35 of the Indian Income Tax Act,

1922 (corresponding to Section 154 of the Income Tax Act, 1961), and the law applicable to ascertain whether there was an error.

(c) Income Tax Officer, ""E"" Ward and Others Vs. Raleigh Investment Co. Ltd., , where this court observed as follows (page 619) :

Section 154 of the Income Tax Act, 1961, and the previous Section 35 of the old Act of 1922 provide for rectification of mistake apparent from

the record. The scope and ambit of the sections have been the subject-matter of several decisions and it has been held that a mistake which is not

obvious or which requires investigation or in respect of which two different views are possible is not a mistake covered or contemplated by Section

154 of the Income Tax Act, 1961. We may refer to the decisions in the cases of T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay

Vs. Volkart Brothers, Bombay, , Income Tax Officer, ""G"" Ward and Another Vs. India Foils Ltd., and of Harbans Lal Malhotra and Sons Private

Ltd. Vs. Income Tax Officer, ""C"" Ward and Another, . Therefore, in order to come within the ambit of the section, it is necessary that the mistake

must be obvious, patent and self-evident and a mistake on which conceivably there can be two opinions cannot be rectified by virtue of Section

154 of the Income Tax Act, 1961.

11. Dr. Pal also cited a decision of the Gujarat High Court in Commissioner of Income Tax, Gujarat Vs. Ajay Printery Private Ltd., , where it was

held that the business of printing balance-sheets, profit and loss accounts, dividend warrants, pamphlets, share certificates, etc., was a business of

manufacturing of goods.

12. In the facts and circumstances of this case, however, in our opinion the order of the Tribunal cannot be sustained. The Tribunal erred, firstly, in

embarking on a detailed investigation of facts of the actual work carried on by the assessee as also in seeking to construe the meaning of different

general expressions like "" manufacture "", "" piling "" and "" goods "". It is only after such investigation and; construction that the Tribunal came to the

conclusion that a mistake appeared on the record. The Tribunal was further in error in holding that the provisions of Paragraph D of Part II of the

First Schedule to the Finance Act, 1964, did apply in the instant case. .

13. The relevant provisions of the Finance Act, 1964, are as follows :

In the case of every company, other than the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956

(XXXI of 1956)--Rates of super-tax on the whole of total income ...55%.

Provided that--.....

(iii) (A) in the case of a company which is wholly or mainly engaged in the manufacture or processing of goods or in mining or in the generation or

distribution of electricity or any other form of power and whose total income does not exceed rupees five lakhs, a rebate at the rate of 30 per cent.

on so much of its total income as does not exceed rupees 2 lakhs and a rebate at the rate of 20 per cent. on the balance of the total income;.....

shall be allowed.....

14. The Tribunal appears to have proceeded on the assumption that the assessee was engaged wholly or mainly in the manufacture or processing

of goods. Even if we assume that construction of piles by the assessee amounted to manufacture of goods, there does not seem to be anything on

record on which the Tribunal could have come to the conclusion that the assessee was wholly or mainly engaged in such manufacture. From the

records before us, as appearing in the paper book, it is quite clear that the assessee was carrying on business of piling, that is laying foundation of

other constructions, and not a production of piles simpliciter. In any event it cannot be said with certainty whether the activities of the assessee was

mainly manufacture or mainly construction, the manufacture of piles being an ancillary to such construction. Two views were possible as to whether

the assessee was carrying on manufacture or processing and also whether the assessee was engaged wholly or mainly in such manufacture or

processing.

15. On these grounds, it appears to us that the mistake, if any, in the record is not apparent so as to be rectified u/s 154 of the Income Tax Act,

1961.

16. For the reasons aforesaid, we answer the question referred to us in the negative and in favour of the revenue. There will be no order as to

costs.

C.K. Banerji, J.

17. I agree.