COMMISSIONER OF INCOME TAX Vs SWADESHI COMMERCIAL CO. LTD.

Court: Calcutta High Court

Date of Decision: April 25, 1990

Citation: (1992) 106 CTR 122

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

Bench: Full Bench

Judgement

BHAGABATI PRASAD BANERJEE, J. :

The Tribunal has referred the following question of law to this Court under s. 256(1) of the IT Act, 1961 :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the ITO had exceeded his jurisdiction in

invoking provision of s. 154 of the IT Act, 1961 for the purpose of computing relief under s. 90M of the IT Act, 1961 ?

2. The assessment years involved are 1977-78 and 1978-79. In this particular case the original assessment for the year 1977-78 was completed

on 13th December, 1979 and the assessment for the year 1978-79 was completed on 6th February, 1980 respectively. In the said assessments

deduction under s. 80M (as it then stood) were allowed. Later, the provision of s. 80M was amended by virtue of provision of s. 80AA by

Finance (No. 2) Act, 1980 which was given retrospective effect from 1st April, 1968. In view of the said amendment to the ITO treated the

deduction allowed under s. 80M as mistake apparent from the record and proceeded to rectify the said mistake in both the assessment orders

under s. 154 of the IT Act. The objection of the assessee thereto was overruled. The ITO estimated 10% as the expenses for earning the said

dividend. The assessee against the said order passed by the ITO under s. 154 of the IT Act preferred an appeal before the CIT(A). The CIT(A)

accepted the contention of the assessee that in the deduction allowable under s. 80M was debatable and was open to divergence of opinions. The

CIT(A) accepted the stand of the assessee and observed :

In my opinion, the claim merits acceptance. I have decided this very point in a number of cases of this group. I have held that the ITO would be

exceeding his jurisdiction if he ventured to compute the net dividend income on any formula or method in a rectification proceedings under s. 154.

As pointed out by the authorised representative that there is a dispute between the department and the appellant company as to what should be the

net dividend income on which the latter should be entitled to s. 80M relief. And it is a settled law now that any matter on which there is a dispute,

or about which there can be a debate cannot be dealt with in a rectification proceedings under s. 154 T.S. Balaram, Income Tax Officer,

Company Circle IV, Bombay Vs. Volkart Brothers, Bombay,

2. Then the matter was taken up before the Appellate Tribunal at the instance of the Revenue and the Tribunal rejected the appeal filed by the

Revenue, inter alia, by the following order :

We have considered the contentions raised by the department before us. We have also gone through the facts on record. We agree with the

CIT(A) that the estimate of quantum of expenses attributable to the earning of dividends was a deductible matter and so it was outside the purview

of s. 154 of the Act as has been decided in the case of Volkart Bros. (supra). The introduction of s. 80AA might have made the original order

erroneous, but there was no mistake apparent from the record which could be rectified under s. 154 of the Act because the exact amount of

expenses relatable to the earning of the dividends was not available in the original assessment order as so that figure had to be estimated with

reference to a number of factors. Hence, we uphold the order of the CIT(A).

4. The provisions of s. 154 of the IT Act would only be invoked with a view to rectifying any mistake apparent from the record. So the mistake

must be apparent from the record. In the instant case the difficulty that was faced by the ITO was that there was no figure available before the ITO

for the purpose of giving effect to the law as amended with retrospective effect. Even if the amended law is applicable then it has to be established

that expenses were incurred for the purpose of earning dividend and the computation has to be done accordingly. Before the ITO there was no

such figure available on record and the ITO had to travel beyond the records of the case in order to discover the mistake which would be evident

from the following observations made by the ITO in the proceedings under s. 154 of the IT Act :

The assessee had income from business, interest, dividend and rent. Considering the nature of the activities I feel, that out of expenses incurred by

the assessee for its total activities expenses to the extent of 10% of the dividend income can reasonably be estimated as have been spent for the

earning of dividend.

It has been held by this Court in the case of Commissioner of Income Tax Vs. E. Sefton and Co. (P.) Ltd., to which one of us was a party to that

judgment that the law as amended with retrospective effect could be given effect to correct an error apparent on the face of the record under s.

154 of the Act. In this particular case the Tribunal has also rightly pointed out this aspect of the matter. But the Tribunal held that introduction of s.

80AA has made the correct original passed contrary to law. But there is no mistake apparent from the record which could be rectified under s.

154 of the IT Act because the exact amount of expenses relating to the earning of the dividend was not available in the original assessment order

and so, the figure had to be estimated with reference by the ITO on the basis of his own estimate, without having relation to the records of this

case. In our view, in order to attract the provision of s. 154 of the IT Act the error must be apparent from the record. In other words it must,

appear expressly in the order itself. In the order if the mistake could not be detected, in that event s. 154 could not be invoked as rightly pointed

by the Tribunal. Accordingly, we are of the view, the Tribunal has taken a correct view in the matter. Accordingly, the question of law is answered

in the affirmative and in favour of the assessee.

There will be no order as to costs.

SUHAS CHANDRA SEN, J. :

I agree.