

Bithal Das Modi Vs. Cit

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Court : Allahabad

Decided On : Feb-01-2005

Reported in : (2006)199CTR(All)167; [2005]147TAXMAN609(All)

Appeal No. : ITR No. 184 of 1991 1 February 2005

Appellant : Bithal Das Modi

Respondent : Cit

Advocate for Pet/Ap. : Shakeel Ahmad, *for the Applicant* A.N. Mahajan, *for the Respondent*.

Judgement :
ORDER

By the Court

The Income Tax Appellate Tribunal, Allahabad has referred the following questions of law under section 256(1) of the Income Tax Act, 1961, hereinafter referred to as 'the Act', for opinion to this Court:

'1. Whether on the facts and in the circumstances of the case, the disallowance of whole of interest amounting to Rs. 38,990 as had been made in the assessment order dated 26-8-1981 did not amount to a 'mistake' and the assessee could not have sought for the rectification of the same under section 154 of the Income Tax Act, 1961 ?

2. Whether on a true and correct interpretation of the provisions of section 154, the Tribunal was correct in holding that the assessee could not have claimed the rectification of quantum of disallowance of interest, by relying on the findings given by the Tribunal in the immediately preceding year ?

3. Whether the Tribunal was legally correct in holding that the findings given by the ITAT in the assessment year 1977-78 (where from the disallowance in the assessment year 1978-79 had followed) could not have been referred to and relied upon by the assessee for seeking rectification under section 154 ?

4. Whether on the facts and in the circumstances of the case, the disallowance of interest to the extent of Rs. 39,568 as stood incorporation in the assessment order, dated 26-8-1981 was not a mistake within the meaning of section 154 and was, therefore, not rectifiable thereunder ?

2. The present reference relates to the assessment year 1978-79.

3. Briefly stated the facts giving rise to the present reference are as follows :

The applicant is being assessed to income-tax in the status of an individual. He is engaged in practising Naturopathy at Gorakhpur. For the previous year ending 31-12-1987 which is relevant to the assessment year 1978-79, the assessment was completed on 26-8-1981. In respect of certain borrowings the claim of interest was disallowed by the assessing officer on the ground that a similar claim was not found to be admissible in the immediately preceding year, i.e., assessment year 1977-78. After completion of the assessment for the assessment year 1978-79, the Tribunal has held for the assessment year 1977-78 that the disallowance of interest should be limited to the extent of interest due on the debit balance that has appeared in the account of KM. Modi and C.M. Modi. Since disallowance of interest in the assessment year 1978-79 was linked with the similar disallowance in the immediately preceding year, i.e., 1977-78 in which year only a part of the claim was found to be allowed by the Tribunal, the applicant moved a petition under section 154 of the Act requesting the assessing officer to limit the disallowance to the extent only to which it has been found to be disallowable by the Tribunal. The order of the Tribunal for the assessment year 1977-78 has

become final. The Income Tax Officer has rejected the application filed under section 154 of the Act. Feeling aggrieved the applicant preferred an appeal before the Appellate Assistant Commissioner, who found merit in the contention and granted requisite relief under section 154 of the Act. The revenue, feeling aggrieved, preferred an appeal before the Tribunal. The Tribunal found that the scope of the Tribunal's order dated 5-5-1983 could not have been extended to mean that there was a mistake in the subsequent year also. The Tribunal held that its order was operative and binding on the revenue authorities for the year for which it rendered its decision, i.e., for the assessment year 1978-79 and on that basis it could not be said that there was any mistake apparent on record for the assessment year 1977-78. The Tribunal also held that where two opinions were possible which required adjudication, provisions of section 154 could not be applied. The revenue's appeal was allowed by the Tribunal.

4. We have heard Shri Shakeel Ahmad, learned counsel for the applicant and Sri A.N. Mahajan, learned Standing counsel appearing for the revenue.

5. We find that during the assessment year in question the claim of interest has been disallowed only on the ground that in the immediately preceding year, i.e., assessment year 1977-78 the same claim has been disallowed. For the reasons best known the applicant did not agitate this point any further and this claim was allowed to become final. It is well-settled that under section 154 of the Act the mistake which could be rectified should be apparent from the record. For a mistake where two opinions are possible which required adjudication, it cannot be said to be a mistake apparent on record which could be rectified under section 154 of the Act. In the present case we find that the claim of interest has been disallowed on the basis of disallowance of similar claim in the previous year which is based on existence of certain facts. It cannot be said that if the claim which is based on certain factual aspects has been disallowed on the basis of similar disallowance in the previous year and which stood ultimately allowed by the Tribunal would not require any debate for investigation of facts for allowing the claim in the subsequent year and therefore it cannot be treated as a mistake apparent on the record. Thus we do not find any legal infirmity in the order of the Tribunal. It may be mentioned there that the provisions of section 154 of the Act

are akin to the provisions of order XLVII rule 1 of the Code of Civil Procedure in which a power of review has been given on the ground if there has been a mistake or error apparent on the face of the record. It is well-settled that if an order has been passed on the basis of law which is applicable and enforceable at that point of time and subsequently reversed by the Apex Court, it does not mean that there is a mistake or error apparent on the face of record so as to enable the parties to seek review of the judgment.

6. In view of the foregoing discussions, we answer all the questions referred to us in the negative, i.e., against the assessee and in favour of the revenue. However, there shall be no order as to costs.

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