SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Cit Vs. Richa and Co.

Cit Vs. Richa and Co.

SooperKanoon Citation : sooperkanoon.com/710488

Court : Delhi

Decided On : Feb-19-2001

Reported in : (2002)172CTR(Del)497

Appeal No. : IT Appeal No. 149 of 2000 19 February 2001 A.Y. 1989-90

Appellant : Cit

Respondent : Richa and Co.

Advocate for Pet/Ap. : R.C. Pandey and; Ms. Premlata Bansal, for the Revenue; Dr.

Judgement :

Arijit Pasayat, C.J.

This is an appeal under section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The assessed had filed its return for the assessment year 1989-90. An intimation under section 143(1)(a) of the Act had been issued to it. Subsequently action under section 154 of the Act was initiated on the ground that in view of the retrospective amendment of section 28(iiib) by the Finance Act, 1990, operative with retrospective effect, the assesses claim for deduction under section 80HHC of the Act was to be altered for the purpose of an allowance. Overruling the assesses objection that such action was not permissible under section 154 of the Act, the

assessing officer passed an order by which he reduced the allowance of deduction under section 80HHC of the Act. An appeal was preferred by the assessed before the Commissioner (Appeals). The said authority upheld the assessing officers order. The matter was carried in further appeal before the Income Tax Appellate Tribunal, Delhi Bench 'D', New Delhi (hereinafter referred to as 'the Tribunal'). By order dated 30-3-2000, the Tribunal held that section 154 of the Act was not applicable to the facts of the present case. It inter alia, made the following observations :

'7.4. We have considered the rival submissions and materials on the file. We are of the view that the action of the assessing officer, in revising the deduction under section 80HHC by the impugned order under section 154 was not proper and valid. On the facts and in the circumstances of the case, the reduction in the claim under section 80HHC could not have been made by the way of prima facie adjustment under section 143(1)(a) and hence it could not be said that there was mistake apparent from record so far as the intimation under section 143(1)(a) on this point was concerned. The question of relief under section 80HHC as in the present case was debatable issue which did not fall within the purview of prima facie adjustment under section 143(1)(a). Such a debatable issue could be taken up by the assessing officer in regular assessment proceedings under section 143(3) only. Keeping also in view the various circulars of the Central Board of Direct Taxes and decisions of the High Courts and the Tribunal, on, the issue, we hold that impugned order under section 154 was not justified and valid.'

3. In the present appeal, it has been urged that action under section 154 of the Act is permissible in respect of a provision, which changes the taxability situation and is introduced with retrospective effect.

4. Learned counsel for the assessed, on the other hand, submitted that all the requisite information were supplied and, thereforee, there was no scope for taking resort to section 154 of the Act.

5. We find that the Tribunal has proceeded on the basis that the issue which was being canvassed, was a debatable issue which did not bring in application of section 154 of the Act. The adjustment, which was sought to be made by the

assessing officer, was not one of those prima facie adjustments, permissible while exercising power under section 143(1)(a) of the Act Law is fairly well settled that section 154 of the Act has no application where debatable issues are involved. Where the error sought to be rectified is far from self-evident, it ceases to be an apparent error. An 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 questions of fact or law. (See Master Construction Co. (P) Ltd. v. State of Orissa : [1966]3SCR99). The power exercisable under section 154 of the Act 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'. (See T.S. Balaram, ITO v. Volkart Bros. : [1971]82ITR50(SC)). That being the position, the Tribunals conclusion that the matter could be taken up in a regular proceeding and not under section 154 of the Act is in order.

Accordingly this appeal is not entertained.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com