

Datamatics Financial Services Vs. Jcit, Special Range-25

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Aug-25-2004

Reported in : (2005)95TTJ(Mum.)944

Judge : O Narayanan, I Bansal

Appellant : Datamatics Financial Services

Respondent : Jcit, Special Range-25

Judgement :

1. This Miscellaneous Application has been filed on behalf of the assessee in respect of order passed by this Tribunal ("A" Bench) dated 27th January 2004 in ITA No. 2115 and 3480/M/99 2. It is the main contention of the assessee that while deciding the claim of the assessee with regard to deduction Under Section 80-IA, the Tribunal did not consider the existing jurisdictional High Court's decision in the case of CIT v. Emirates Commercial Bank Ltd., 262 ITR 55 (Bom) (Order dated 30th April 2003).

3. Facts as mentioned in the afore-mentioned order of the Tribunal are not in dispute. Deduction Under Section 80-IA was claimed by the assessee in respect of its data processing activity at a large scale.

It was the claim of the assessee that such activity is an industrial activity and the reports and results obtained out of data processing are equal to manufacture and production of an article or thing, therefore, the assessee is eligible for claiming

deduction Under Section 80-1A. Reliance on the following decisions was placed which are also enumerated in para 3 of the afore-mentioned order.

i) CIT v. Peerless Consultancy Services P. Ltd. - 54 Taxman 68 (Cal) affirmed by the Supreme Court in 248 ITR 178 ii) CIT v. Computerised accounting and Mgt. Services Pvt. LTD - 235 itr 502 (Ker) vii) CIT v. Southern Roadways Ltd 133 Taxman (Mad) affirming the Madras High Court decision of CIT v. Comp.Help Services (P) Ltd. 246 ITR 722 viii) Unreported decision of Mumbai Tribunal "C" Bench (ITA No. 1734 and 1735/M/2001) (refer 34 BCAJ 987 -) order dated 18.1.2002 4. The Tribunal after considering the submission of both the parties decided the issue against the assessee following two decisions of Hon'ble Bombay High Court in the case of CIT v. R. Shroff Consultants Pvt. Ltd., 238 ITR 1018 and CIT v. Prudential Management and Services Pvt. Ltd., 250 ITR 136. In the later decision, i.e. CIT v. Prudential Management and Services Pvt. Ltd. the Hon'ble High Court has followed its earlier decision in the case of CIT v. R. Shroff Consultants Pvt Ltd. (Supra).

5. Referring to the above mentioned facts, it was argued by the Authorised Representative of the assessee that there is a mistake in the order of the Tribunal which is apparent from record as the Tribunal did not consider the later decision of jurisdictional High Court on the relevant issue in the case of Emirates Commercial Bank Ltd. (Supra). He contended that the decision in the case of CIT v. R. Shroff Consultants Pvt. Ltd.(Supra) was never cited before the Tribunal. The assessee had placed reliance on various decisions (referred to in para No. 3) which clearly held that the assessee is entitled to get deduction Under Section 80-1A. His submissions in this regard are two-fold. Firstly, in a case where there are two decisions of jurisdictional High Court of the benches of equal strength expressing different views, the later decision has a binding force as per rule of precedent. Secondly, if it is so, the mistake is evident that the later decision of jurisdictional High Court was not followed while deciding the issue. To explain, he contended that no doubt, there was an earlier decision of jurisdictional High Court, according to which, the assessee on its data processing activities is not entitled to deduction Under Section 80-1A but later on, the Bench comprising of equal strength did not follow the earlier view even when the earlier decision was referred to before them.

To demonstrate, he invited our attention towards the following observations of Hon'ble Bombay High Court in the case of CIT v.Emirates Commercial Bank Ltd. (Supra) with respect to an issue that whether the assessee is entitled to get deduction Under Section 80IA. "Question No. III: Whether the Tribunal was right in allowing deduction under Section 32A in respect of the computers installed in the office premises ?" We find merit in the arguments advanced on behalf of the assessee on this point. It is, no doubt, true that the judgments cited on behalf of the assessee refer to the assesseees whose business was confined to data processing for their clients. Today, we have computerized accounting in the banks. In the case of computers, which existed during the relevant assessment year and even today, the operation of the computers in principle remains the same. That, commercial data is fed into the computers as inputs as per the requirement of various customers and the data is processed to get necessary information, computation and statements as outputs. These computers cannot be compared to calculators. Today, in matters of investments and security transactions, banks have a front office and back office. Today, under customer services, the banks render several services including providing information to customers on the basis of which the customers would make investments. All this is based on the print outs which constitute information, computations and statements. In the circumstances, we are of the view that all the three conditions of Section 32A()(b)(iii) are satisfied. Gur view is supported by the judgment of the Madras High Court in the case of CIT v. Comp-Help Services (P.). Ltd. [2000] 246 ITR 722 as also by the judgment of the Kerala High Court in the case of CIT v. Computerised Accounting and Management Service Pvt. Ltd. [1999] 2345 ITR 502. We do not find any merit in the argument of the Department that these two judgments do not apply because, in those cases, the assessee was in the business of data processing. The nature of the services rendered by the bank to its customers does involve the work of data processing. It is on the basis of this data processing that the information is provided to its customers by the bank. It is on the basis of this data processing done by the computers that the management information reports come out.

Answer: In the circumstances, we answer the above question No. III in the affirmative, i.e. in favour of the assessee and against the Department.

He contended that in the afore-cited decision, the Hon'ble Bombay High Court has kept in view the decision in the case of CIT v. R. Shroff Consultants Pvt. Ltd. (Supra) which was cited before them by the revenue. Despite there being the decision in the case of CIT v. R. Shroff Consultants Pvt. Ltd. (Supra), the Bench of equal strength has taken a different view. The decision in the case of Emirate Commercial Bank Ltd. (Supra) was very much in existence when the Tribunal decided the issue. The later decision by a Bench of Co- equal strength is binding as per rule of precedent. For this proposition, he placed reliance on the following decisions: 1) Bhika Ram v. Union of India, 238 ITR 113 (Del). He invited our attention towards following observations of the Hon'ble Delhi High Court :-Satinder Singh v. Umrao Singh, AIR 1961 SC 908, to submit that compensation would not be treated as income. Learned counsel further submitted that the decision of the Supreme Court in Satinder Singh's case AIR 1981 SC 908 was not brought to the notice of the Supreme Court when Bikram Singh's case [1997] 224 ITR 551, was decided. It is also submitted that the reasoning on which their Lordships have proceeded in the case of Satinder Singh, AIR 1961 SC 908, was also not argued before the Supreme Court in Bikram Singh's case [1997] 224 ITR 551.

Not only are we not satisfied about the correctness of the submission so made, we are also of the opinion that such a plea is not open for consideration by us and Bikram Singh's case [1997] 224 ITR 551 (SC), being a later pronouncement of the Supreme Court by a Bench of co-equal strength, it is binding on us".

2) Gujarat Housing Board. Ahmedabad. v. Nagajibhai Laxmanbhai and Ors., AIR 1986 (Guj. 81) "In contradistinction to the above-said decision, we have catena of decisions which say that in respect of the decision of the Superior Court of co-equal benches, the later one prevails over the former.

In Vasant Tatoba Hargudev Dikkaya Muttaya Pujari, AIR 1980 Bom 341 a Bench of the Bombay High Court has held that in case of conflict between earlier and later decisions of Supreme Court where each Bench consists of equal number of Judges, the later decision should prevail. In Govindanaik G. Kalaghatigi v. West Patent Press Co. Ltd. AIR 1980 Kant 92 the Full Bench of the Karnataka High Court has definitely held that when there are two conflicting decisions of the

Supreme Court, one given by the larger Bench should be followed and that if both Benches of the Supreme Court consist of equal number of Judges, the later of the two decision should be followed by High Court Courts and other courts. We are in complete agreement with the principle laid down by the Bombay and Kamataka High Courts in Vasant Tatoba Hargude v. Dikkaya Muttaya Pujari, AIR 1980 Bom 341 and Govindanaik G. Kalaghatigi v. West Patent Press Co. Ltd., AIR 1980 Kant 92 (FB) respectively. In this view we hold that the decision reported in Himalaya Tiles and Marble (P) Ltd. v. Francis Victor Countinho AIR 1980 sc 1118 holds the field and that the petitioner herein is an interested party whose presence is necessary to effectually and completely decide the issue in question." 3) Nandanam Construction Co. and Ors. v. Assistant Commissioner (Intelligence). 1983 Tax Law. He invited our attention towards the following observations :- "17. But we are now confronted with conflicting decisions rendered by Benches of same strength. The decision in Pio Food Packer's case is a 'subsequent' or later decision.

18. In the circumstances, we choose to follow the later decision.

Accordingly we rely on Pio Food Pakeer's case and hold that to attract the provisions of Section 6A(ii)(a) there must be consumption of the original goods for the purpose of manufacture. In the absence of any such consumption, the petitioners are not liable to tax." In support of second proposition that if according to law of precedent, the later decision has to be followed , then certainly there is a mistake in not following the existing binding judgment of jurisdictional High Court. He pointed out that even in a case where later decision of jurisdictional High Court comes subsequent to passing the order, it has been held that there is a mistake apparent from record in the order of lower authority which is rectifiable. For this purpose, he placed reliance on the following decisions :- To raise a proposition that when the point is covered by a decision of Supreme Court or concerned High Court, either rendered prior to or subsequent to the order proposed to be rectified, then the point ceased to be a debatable point and it also ceases to be a point requiring elaborate argument or detailed investigation/ enquiry. The subsequent decision of jurisdictions High Court do not enact the law but declare the law as it was. Thus, not following the same, is a glaring mistake amenable for rectification.

To raise a proposition that it is within the power of Tribunal to rectify mistakes in its order if the decision of jurisdictional High Court is not noticed by the Tribunal. The provisions of Section 254(2) are applicable to such order. The decision of jurisdictional High Court even if rendered subsequently, would constitute a mistake apparent from the record investing an authority with jurisdiction to rectify the mistake.

To raise a proposition Subsequent decision rendered by jurisdictional High Court renders the order amenable for rectification.

6. We have carefully considered the rival submission in the light of material placed before us. We may point out that during the course of hearing of the appeals of the assessee, the three decisions of jurisdictional High court in the cases of 1. CIT v. R. Shroff Consultants Pvt. Ltd., 238 ITR 1018, 2 CIT v. Prudential Management & Services Pvt. Ltd., 250 ITR 136 and 3. CIT v. Emirates Commercial Bank Ltd., 262 ITR 55 (Bom) were not relied upon by either party. The Tribunal itself took note of the decisions in the cases of R. Shroff Consultants Pvt. Ltd. (Supra) and Prudential Management and Services Pvt. Ltd. (Supra). The case of assessee in this M.A. is that the Tribunal in its order has committed a mistake which is apparent from record as the Tribunal did not consider the later existing and binding decision of jurisdictional High Court in the case of Emirates Commercial Ltd., (Supra) and took into consideration an old decision which was not followed by the jurisdictional High Court in its later decision. To establish that it is a mistake apparent from record, as it has been pointed out earlier, the submissions are two fold. Firstly that the later decision of jurisdictional High Court of Co-equal strength expressing different view has a precedent over earlier decision. Secondly if this proposition is accepted then non-consideration of existing later decision of jurisdictional High Court give rise to a mistake which is apparent from the record and has to be rectified accordingly.

7. Considering the first submission, we find that it is only the later decision which has a precedent over earlier decision even in a case where earlier decision was neither cited nor discussed in the later decision The situation in the present case is rather on strong footing as the earlier decision was under consideration of their

Lordships in the later decision. In the case of Bhika Ram and Ors. v. Union of India (Supra), their Lordships of Delhi High Court, when faced with a situation where in a later decision, the Hon'ble Supreme Court did not consider the earlier decision, observed as follow :-Satinder Singh v. Umrao Singh, AIR 1961 SC 908, to submit that compensation would not be treated as income. Learned counsel further submitted that the decision of the Supreme Court in Satinder Singh's case AIR 1961 SC 908 was not brought to the notice of the Supreme Court when Bikram Singh's case [1997] 224 ITR 551. was decided. It is also submitted that the reasoning on which their Lordships have proceeded in the case of Satinder Singh, AIR 1961 SC 908. was also not argued before the Supreme Court in Bikram Singh's case [1997] 224 ITR 551.

Not only are we not satisfied about the correctness of the submission so made, we are also of the opinion that such a plea is not open for consideration by us and Bikram Singh's case [1997] 224 ITR 551 (SO), being a later pronouncement of the Supreme Court by a Bench of co-equal strength, it is binding on us." 8. The other two decisions i.e. Nandanam Construction Company and Ors.

v. Asstt. Commissioner (Intelligence) (Supra) and Gujarat Housing Board (Ahd) v. Nagajibhai Laxmanbhai and Ors. (Supra) are also expressing the same opinion. No contrary decision has-been brought to our notice by the revenue. Therefore, the law is well settled that the later decision by a Bench of Co-equal strength has a binding force even in a case where earlier decision was not considered in later decision.

Thus, the later existing decision of jurisdictional High Court in the case of CIT v. Emirates Commercial Bank Ltd. (Supra) , is a binding decision which was required to be followed as on the date when this Tribunal rendered its decision. The date of order of Tribunal is 27th January 2004 and the date of order of the jurisdictional High Court in the case of CIT v. Emirates Commercial Bank Ltd. is 30th April 2003 and it was also reported prior to the date of order of the Tribunal.

Thus, the decision of Tribunal was rendered in contradiction of the existing binding decision of jurisdictional High Court in the case of CIT v. Emirates Commercial Bank Ltd. (Supra).

9. There cannot be any dispute to the proposition under Article 227 of the Constitution, the High Court is vested with the power of superintendence over the Courts and Tribunals in the State. This Tribunal is subject to the superintendence of Hon'ble Bombay High Court. Accordingly, the later decision of jurisdictional High Court (as discussed above) was binding on this Tribunal.. Any order of a subordinate appellate authority rendered in contradiction of existing and binding decision of the jurisdictional High Court can give rise to a mistake which has to be considered as a mistake apparent from record within the meaning of Section 154/254(2) of the Act. The case law relied upon by the Learned Authorised Representative of the assessee in this context establishes the proposition of law that even a subsequent decision of jurisdictional High Court can give rise to mistake apparent from record. Here also, the case of assessee is on sound footing as the Tribunal in the present case did not consider the existing and binding decision of jurisdictional High Court. Therefore, after careful consideration of entirety of facts and circumstances and case laws, we are of the opinion that there is a mistake in the afore-said order passed by the Tribunal which is apparent from the record. There is no dispute with regard to the findings of the Tribunal that assessee is engaged in the business of data processing activity and their Lordships of Bombay High Court in the later decision in the case of CIT v. Emirates Commercial Bank Ltd. (Supra) following the decision of Madras and Kerala High Courts in the cases of CIT v. Comp Help Services P.Ltd., 246 ITR 722 (Mad.) and CIT v. Computerised Accounting And Management Service Pvt. Ltd., 235 ITR 502 (Ker.) respectively have held that data 'processing activity fulfils all the three conditions of Section 32A(2)(b)(iii) which includes a condition of manufacture and production of an article or thing, not being an article or thing specified in the list in the Eleventh Schedule. The claim of the assessee has been disallowed only on the ground that data processing activity is not an activity of manufacture or production of an article or thing. This view is contrary to the view of jurisdictional High Court as expressed in the case of CIT v. Emirates Commercial Bank Ltd. (Supra) (the case relied upon by the Learned A.R).

10. In the case ACIT v. Saurashtra Kutch Stock Exchange Ltd. (Supra), their Lordships of Hon'ble Gujarat High Court have analysed as many as 67 judicial pronouncements and have summed up at page 162 of the report as follows:- "(a)

The Tribunal has power to rectify a mistake apparent from the record on its own motion or on an application by a party under Section 254(2) of the Act; (b) An order on appeal would consist of an order made under Section 254(1) of the Act or it could be an order made under Sub-section (1) as amended by an order under Sub-section (2) of Section 254 of the Act; (c) The power of rectification is to be exercised to remove an error or correct a mistake and not for disturbing finality, the fundamental principle being, that power of rectification is for justice and fair play; (d) That power of rectification can be exercised even if a mistake is committed by the Tribunal or even if a mistake has occurred at the instance of party to the appeal; (e) A mistake apparent from record should be self-evident, should not be a debatable issue, but this test might break down, because judicial opinions differ, and what is a mistake apparent from the record cannot be defined precisely and must be left to be determined judicially on the facts of each case ; (f) Non-consideration of a judgment of the jurisdictional High Court would always constitute a mistake apparent from the record, regardless of the judgment being rendered prior to or subsequent to the order proposed to be rectified; (g) After the mistake is corrected, consequential order must follow, and the Tribunal has power to pass all necessary consequential orders." 11. Thus, non-consideration of a judgment of jurisdictional High Court constitutes a mistake apparent from record, regardless of judgment being rendered prior to or subsequent to the order proposed to be rectified and after the mistake is corrected, consequential order must follow and the Tribunal has power to pass all necessary consequential orders. Therefore, we hold that non-consideration of existing and binding decision of jurisdictional High Court constitutes a mistake apparent from the record in the order of the Tribunal dated 27th January 2004 and we rectify the said order to the extent that assessee is entitled to get benefit of deduction Under Section 80-IA and we hold that CIT(A) has rightly held so. Thus, revenue's ground relating to deduction Under Section 80IA for both the years is dismissed. As the only other ground taken in the appeal for A.Y. 1996-97 by the revenue was in respect of disallowance of water charges paid to BMC was dismissed by the order of this Tribunal dated 27th January 04, the appeals filed by the revenue are considered to be dismissed.

12. In the result, the Miscellaneous Application filed by the assessee is allowed in the above-mentioned terms.

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