

Container Corporation of India Vs. Dcit

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Oct-12-2004

Reported in : (2005)92ITD333(Delhi)

Judge : K Singhal, B Jain

Appellant : Container Corporation of India

Respondent : Dcit

Judgement :

1. The only issue arising in this appeal is whether the assessee could claim depreciation Under Section 32 by moving an application for rectification Under Section 154 of Income-tax Act, 1961.

2. The assessee is a public sector undertaking which filed its original return of income on 31st December, 1991 declaring total income of Rs. 7,39,63,395/-. The original assessment Under Section 143(3) was made on 12th October, 1993 accepting the returned income of the assessee.

Subsequently, notice Under Section 148 was issued on 21st September, 1994. In the course of such re-assessment proceedings, the assessee noticed that it forgot to claim depreciation in respect of assets owned by it and accordingly, made an application Under Section 154 on 18.11.96, which was filed in the office of AO on 22.11.96. The contents of the said application are being reproduced as under: "The income-tax case for the asstt. year 1991-92 of our company is at present

pending for assessment Under Section 147 of the Income-tax Act, 1961. During the proceedings of the case, it has come to our notice that depreciation as per income-tax Act amounting to Rs. 11,45,168.00 inadvertently could not be claimed in the income-tax return for the assessment year under reference.

154. In our income-tax computation, starting with profit as per Profit and Loss account before depreciation, a clerical mistake occurred by not deducting the depreciation as per the Income-tax Act.

It is, therefore, humbly requested to kindly amend the original order passed Under Section 143(3) on 29.10.93 and allow us the depreciation while making the other adjustments, if any, Under Section 147. " (Note: The original order was passed on 12.10.93, which was received by assessee on 29.10.93) The re-assessment order Under Section 147 as well as the order Under Section 154 were passed by the AO on the same date i.e. 28.11.96. In the rectification order Under Section 154, it was observed by the AO that the assessee did not claim depreciation either in the computation of income of the original return or in the course of assessment proceedings. Even the assessee did not move any application after the assessment was finalized Under Section 143(3). According to him, the application Under Section 154 was made during the pendency of re-assessment proceedings and, therefore, the claim of the assessee could not be accepted in view of the Supreme Court judgment in the case of Sun Engineering Works P. Ltd., 198 ITR 297.

3. The matter was carried in appeal before the CIT(A) before whom it was contended that depreciation was not claimed while filing the original return by mistake. It also forgot to attach the depreciation statement calculated as per Income-tax Rules with the return. It was urged that claim of depreciation is a statutory right and, therefore, it has right to ask for rectification It was also urged that the depreciation was being allowed in subsequent years also on the basis of calculations as if the depreciation for asstt. year 1991-92 was allowed by the department. Hence, the mistake was apparent from record which deserves rectification. However, the said contention of the assessee was rejected by holding that there was no mistake apparent from record since neither the return of income

was accompanied with any depreciation chart as per the requirement of Income-tax Rules nor the depreciation was claimed by the assessee. The CIT(A) also placed reliance on the judgment of Bombay High Court in the case of Shri Someshwar Sahkar Sakhar Karkhana Ltd., 177 ITR 443 wherein it was held that depreciation could not be allowed if no such claim had been made by the assessee. It was also observed by him that the request for rectification could not be entertained by AO in re-assessment proceedings in view of the judgment of Supreme Court in the case of Sun Engineering Works P. Ltd. (supra). Lastly, it was held that since the original assessment did not exist after the issue of notice Under Section 148, the question of rectification did not arise. Accordingly, the appeal of the assessee was dismissed. Aggrieved by the same, the assessee is in appeal before the Tribunal.

4. The learned counsel for assessee has vehemently assailed the order of CIT(A) by raising various submissions. Firstly, it was contended that assessee was not seeking any relief in the course of re-assessment proceedings Under Section 147 but was seeking rectification of the original order dated 12.10.93. Therefore, the lower authorities were not justified in rejecting the application of assessee Under Section 154 on the basis of judgment of Supreme Court in the case of Sun Engineering Works P. Ltd. (supra). It was urged by him that both the proceedings Under Section 154 and 147 were different, separate and independent proceedings and therefore his claim could not be rejected by applying the aforesaid judgment of Supreme Court. Secondly, it was submitted that depreciation was also allowed in subsequent year on the written down value which was arrived at on the footing that depreciation had been allowed in the year under consideration.

According to him, the assessee by sheer mistake forgot to make a claim of depreciation as is apparent from the computation sheet. He invited our attention to the computation sheet to point out that computation of income started with the figure of Net Profit and Loss A/c before depreciation but in the end forget to claim the same. According to him, all facts relevant for claiming depreciation are on record. He drew our attention to the list of fixed assets forming part of Schedule 2 attached with the balance sheet. Accordingly, it was urged that AO was duty bound to allow the depreciation to the assessee. Failure to carry out such duty

resulted in mistake apparent from record. In support of his above submissions, he relied on the judgment of Supreme Court in the case of Anchor Pressings (P) Ltd., 161 ITR 159 and judgment of Calcutta High Court in the case of Metal Imports P. Ltd., 72 Taxman 375. He also referred to the Commentary of Kanga, Palkiwala & Vyas on The Law & Practice of Income-tax (9th Edition) for the following proposition: "If all the facts necessary for the grant of deduction or exemption under the relevant section are on record but the assessee has by mistake omitted to make a claim in the original assessment proceedings, he may apply to the AO to grant deduction by way of rectification under this section." 5. On the other hand, the learned DR has strongly supported the order of CIT(A) by submitting that claim is allowable only when claim is made by assessee and not otherwise. Reliance was placed on the judgment of apex court in the case of Mahendra Mills 243 ITR 56. Hence, it was submitted that there was no mistake in the order of assessment originally framed by AO.6. Rival submissions of the parties have been considered carefully in the light of submissions made before us and the case law referred to.

The first question to be considered is whether the application Under Section 154 could be rejected during the pendency of re-asstt.

proceedings. The reason given by CIT(A) was that original assessment became non-existent on issue of notice Under Section 148 and, therefore, AO could not rectify such assessment Under Section 154. This reasoning, in our opinion, is totally erroneous and contrary to the legal position laid down by the apex court in the case of Sun Engg.

Works P. Ltd., 198 ITR 297 on which reliance was also placed by the AO. Their Lordships at page 321 observed "It is only the under assessment which is set aside and not the entire assessment when re-assessment proceedings are initiated". In view of such legal position, CIT(A) erred in law in holding that original assessment order became non existent on initiation of re-assessment proceedings. For the similar reasons, the CIT(A) was not justified in affirming the order of AO that no relief could be allowed in re-assessment proceedings. The rectification application made by assessee was against original assessment proceedings and there was no request to allow any relief in re-assessment

proceedings. Both the authorities had proceeded on the wrong footing that relief was sought in reassessment proceedings. We have already extracted the contents of the said application, which clearly shows that application was made against the original assessment dated 12.10.93. Accordingly, we vacate such findings of CIT(A) and hold that application Under Section 154 against the original assessment order could be considered on merits by AO.7. The next question for our consideration is whether assessee could claim depreciation Under Section 32 by making application for rectification Under Section 154 of the Act on the ground that it forgot to claim the same. This question came up for consideration before the Hon'ble Supreme Court in the case of Anchor Pressings (P) Ltd., 161 ITR 159. In that case, the assessee was engaged in the business of the manufacture and sale of locks used in suitcases and therefore, was entitled to relief Under Section 84 of the Act, as it then was. No claim was made by assessee for relief under this section either in the return of income or in the assessment proceedings or before the first appellate authority. Subsequently, the assessee made an application before the AO Under Section 154 praying for rectification of the assessment order by grant of relief Under Section 84. This application was rejected by ITO. A revision petition filed before CIT has also been rejected. The writ petition moved by the assessee before the High Court was also dismissed. Hence, the matter reached the apex court. Their Lordships held that jurisdiction Under Section 154 of the Act to rectify a mistake is much wider than provided in Order XL VII, Rule 1 of the Code of Civil Procedure, 1908 and, therefore, relief could be allowed in the rectification proceedings if all the factual materials necessary for allowing the relief was available on record and such relief could not be denied merely because assessee had omitted to claim the same. The relevant observations of their Lordships are quoted below: "The jurisdiction Under Section 154 of the Income-tax Act, 1961, to rectify mistakes is wider than that provided in Order XL VII, Rule 1, of the Code of Civil Procedure, 1908. None the less, there must be material to support the claim for relief Under Section 84 and unless such material can be referred to, no grievance can be made if the ITO refused relief.

An obligation is imposed on the Income-tax Officer by Section 84 of the Income-tax Act, 1961, to grant relief thereunder and the relief cannot be refused merely because the assessee had omitted to claim the relief, but the mere existence of

such an obligation on the Income-tax Officer is not sufficient. Precise factual material and clear data must be contained in the record sufficient to enable the Income-tax Officer to consider whether the relief should be granted Under Section 84. In the absence of such material, no fault can be found with the Income-tax Officer for not making an order Under Section 84 favouring the assessee. " 8. In view of the above observations, we are of the view that assessee was legally entitled to claim depreciation in the rectification proceedings Under Section 154. But the contention of the department is that such claim cannot be allowed in view of Supreme Court judgment in the case of Mahendra Mills, 243 ITR 56. In that case, the assessee did not claim depreciation for Asstt. Year 1974-75 in the return but the Income-tax Officer allowed the same. The contention of assessee that right to claim depreciation was optional was rejected by AO. The CIT(A) allowed the appeal of assessee and the Tribunal affirmed the order of CIT(A). The following question was referred to the Hon'ble High Court:- "Whether, on the facts and in the circumstances of the case, the Tribunal was right in coming to the conclusion that the Income-tax Officer could not grant depreciation allowance to the assessee under the Income-tax Act, 1961, when the same was not claimed by the assessee? " The High Court answered the question in favour of the assessee. On appeal to the Supreme Court, it was held that in the absence of any claim by assessee, the same could not be forced upon the assessee.

Their Lordships at Page 78 of the Report observed as under: "The language of the provisions of Sections 32 & 34 of the Income-tax Act, 1961, is specific and admits of no ambiguity.

Section 32 allows depreciation as deduction subject to the provisions of Section 34. Section 34 provides that deduction Under Section 32 shall be allowed only if the prescribed particulars have been furnished Rule 5AA of the Income-tax Rules, 1962, since deleted, provided for the particulars required for the purpose of deduction Under Section 32. Even in the absence of Rule 5AA, the return of income in the form prescribed itself requires particulars to be furnished if the assessee claims depreciation. These particulars are required to be furnished in great detail. There is a circular of the Board dated August 31, 1965, which provides that depreciation could not be allowed where the required particulars

have not been furnished by the assessee and no claim for the depreciation has been made in the return. The Income-tax Officer in such a case is required to compute the income without allowing depreciation allowance. The circular of the Board dated April 11, 1955, imposes merely a duty on the officers of the Department to assist the taxpayers in every reasonable way, particularly, in the matter of claiming and securing relief. The officer is required to do no more than to advise the assessee. It does not place any mandatory duty on the officer to allow depreciation if the assessee does not want to claim that. The provision for claim of depreciation is certainly for the benefit of the assessee. If he does not wish to avail of that benefit for some reason, the benefit cannot be forced upon him. It is for the assessee to see if the claim of depreciation is to his advantage." 9. There appears to be some conflict between these two judgments in as much as in former case it was held that an obligation is imposed on the Income-tax Officer to grant relief if all factual material is available on record while in later case, it has been held that there is no mandatory duty on the officer to allow the depreciation in the absence of assessee's claim. Both these judgments were delivered by bench of two judges and the judgment in the former case was not brought to the notice of their Lordships in the later case. At this stage, it would be appropriate to refer to the judgment of the apex court delivered by bench of three judges in the case of Sun Engineering Works, 198 ITR 297 wherein it was held that judgment of a court has to be understood in the context in which it was considered. The relevant observations of their Lordships are quoted below: "It is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Supreme Court divorced from the context of the question under consideration and treat it to be the complete law declared by the court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the court. A decision of the Supreme Court takes its colour from the questions involved in the case in which it is rendered and, while applying the decision to a later case, courts must carefully try to ascertain the true principle laid down by the decision." Keeping in mind the above observations, let us try to understand whether in reality there is any conflict between the two judgments referred to by the parties. After going through both the judgments minutely, we are of the view that both the judgments hold the different fields and

cannot be said to be in real conflict with each other. In the former case, the court was concerned with the question whether there was any mistake apparent from record Under Section 154 in denying relief to assessee Under Section 84 where assessee omits to claim the same. It is in this context, their Lordships held that jurisdiction of Income-tax Officer Under Section 154 is much wider than that provided in Order XL VII Rule 1 of Civil Procedure Code. Considering such scope of Section 154, it was held that if on the basis of factual evidence on record, the assessee is entitled to claim a relief, then relief cannot be denied where assessee omitted to claim the same. Impliedly, it was held that omission on the part of assessee to claim any relief constituted mistake apparent from record.

9.2 On the other hand, in the later case, the court was not concerned with the issue of 'mistake apparent from record' Under Section 154. The question before the court was whether the Income-tax Officer could thrust upon the assessee any relief which assessee did not intend to avail of. It is in the context of such question, it was held that the officer was not under obligation to allow the same where assessee did not want to avail of such deduction. Further, their Lordships were considering the provisions of Section 32(1) as existed in 1974-75. Such provisions were subject to the provisions of Section 34 which provided the furnishing of prescribed particulars for claiming such deduction.

Their Lordships also considered a circular which provided that without furnishing of such particulars, deduction Under Section 32 could not be allowed. In view of such provisions and circular, their Lordships observed "The Income-tax Officer in such cases is required to compute the income without allowing depreciation allowance" After making such observations, their Lordships clarified another circular dated 11.4.55 and said that role of ITO was advisory and there was no mandatory duty to allow the claim if the assessee does not want to claim. So the entire context was with regard to the provisions of Section 32 as then existed which provided allowance and depreciation subject to furnishing of prescribed particulars. It is in this context, decision was rendered that if assessee did not avail the deduction by not furnishing the particulars then ITO was not bound to allow the same. So, it was a case where assessee deliberately did not avail the deduction.

9.3 In view of above discussions, we are of the view that the later decision would be inapplicable where question regarding jurisdiction Under Section 154 is raised. In the present case, we are concerned with the issue of jurisdiction Under Section 154 which has been considered by the apex court in the former case. Jurisdiction Under Section 154 can be assumed if there is mistake apparent from record. It is immaterial as to whose mistake it is. If on the basis of material on record, assessee is entitled to relief then it would constitute mistake apparent from record and consequently, such relief cannot be denied merely because the assessee omitted to claim by mistake. This is the ratio which has been laid down by Hon'ble Supreme Court in the former case. Hence, the present case would be governed by the ratio laid down by the former case i.e. Anchor Pressings (P) Ltd. (supra).

10. In the present case, the assessee had always been claiming the depreciation in the past as well as subsequent year. It is only by mistake that it forgot to claim the same. Its past and subsequent conduct shows that it had always intended to claim the depreciation. The computation of income appearing at page 17 shows that in the beginning, it took the profits before depreciation but in the end, it forgot to claim the same. Further, it has been claimed that in the subsequent year, the depreciation was allowed on the written down value which was determined after allowing the depreciation of the year under consideration. This also shows the bona fide mistake of the assessee.

Considering the circumstances mentioned above, we are of the view that bonafide of assessee cannot be doubted in not claiming the depreciation and consequently, it is held such omission constituted mistake apparent from record which can be rectified Under Section 154 provided all factual materials are available on record.

11. At this stage, it may be mentioned that Section 32, as originally enacted, allowed the claim of depreciation subject to the condition prescribed by Section 34 read with Rule 5AA. Section 34(1) providing such condition has been omitted from the Statute Book w.e.f. 1.4.88.

Similarly, Rule 5AA was omitted w.e.f. 2.4.87. Therefore, for the year under consideration, there was no condition for allowing the depreciation and the assessee was not required to furnish the particulars as earlier required. The only

information required for claiming depreciation was the written down value of assets at the beginning of the year and additions made to the block of assets. This information was already available on record. Since, the assessee was assessed previously and depreciation was duly allowed, the written down value was already on record. Further, details of fixed assets was on record as per Schedule No.2 enclosed with the audited Balance Sheet.

This schedule provided nature of assets, opening balances, additions made and depreciation claimed in the books. No other information was required to be filed by the assessee. Hence, the assessee was entitled to deduction in the rectification proceedings in view of Supreme Court judgment in the case of Anchor Pressings (P) Ltd. (supra).

12. In view of the above discussion, the order of CIT(A) is set aside and the AO is directed to allow the depreciation as per rules.

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