Rakesh Ramani Vs. Ito

Rakesh Ramani Vs. Ito

SooperKanoon Citation : sooperkanoon.com/73862

Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Mar-07-2005

Reported in : (2006)5SOT547(Mum.)

Appellant : Rakesh Ramani

Respondent : ito

Judgement :

This miscellaneous application filed by the assessee is arising out of order dated 26-2-2003 passed in IT (SS) A. No. 11 /M/2002 pertaining to block period 1-4-1989 to 16-7-1999. The assessee prays for rectifying the order of the Tribunal on the ground that certain mistakes have crept in the order. Before we come to the particulars of mistakes pointed by the learned counsel, it would be proper to narrate the brief facts of the case.

A search action was carried out under section 132 of the Income-Tax Act 1961. One suitcase was found in the possession of assessee, as per Panchnama dated 16-7-1999. This suitcase contained the jewellery of the value of Rs. 36,90,453. On 16-7-1999, Rakesh Ramani, assessee, and his employee Shri Bharat were found by the Police at Ernakulam having possession of the said jewellery. At that time, the assessee failed to adduce any documentary evidence, explaining the source of acquisition and could not account for jewellery found in the said suitcase.

Therefore, the Police intimated the income-tax authorities at Cochin about this case. The competent authority issued warrant of authorization in respect of the search which was carried out and statement of assessee was recorded on oath on 16-7-1999. As the assessee remained unable to adduce any documentary evidence in respect of source of acquisition and accountability of jewellery, the said jewellery was seized by the Income-tax department.

During the course of block assessment proceedings, the assessee vide its letter dated 3-8-2000 contended that he was working as salesman for M/s. Pravin Jewellers at Mumbai. The seized jewellery belongs to said M/s. Pravin Jewellers which is a proprietary concern of his brother.

Following documents were also furnished along with the said letter: (ii) Letter dated 13-8-1999 written by the Intelligence Officer of the department of Commercial Taxes to the Deputy Director of Income tax (Inv.), Ernakulam; (iv) Photocopies of issue voucher Nos. 118 and 119 dated 15-7-1999 issued by M/s. Pravin Jewellers, Mumbai.

On the basis of abovementioned documents, it was claimed that he is an employee of M/s. Pravin Jewellers and had carried the jewellery from Mumbai to Ernakulam for sale thereof on behalf of M/s. Pravin Jewellers. Police record does not mention that any document was found in possession of assessee at the time when he was intercepted by Police at Ernakulam. However, it is the claim of the assessee that he was carrying certain documents, according to which it was evident that the jewellery belongs to M/s. Pravin Jewellers; as the said documents were taken away by Police, the same could not be produced before income-tax authorities. Further, reference to letter dated 13-8-1999 was. made which was written by Intelligence Officer of the department of Commercial Taxes to the Deputy Director of Income-Tax (Inv.), Ernakulam. From the contents of that letter, it was pointed out that the assessee was in possession of certain documents according to which it is clear that the jewellery in question belongs to M/s. Pravin Jewellers and these documents were seen by Intelligence Officer of the department of Commercial Taxes on 16-7-1999. The issue voucher Nos. 118 and 119 were stated to be in possession of assessee which proves that assessee was carrying the jewellery on behalf of M/s. Pravin Jewellers, The Power of Attorney dated 16-1-1997 was produced. On the basis of all these documents, it was the claim of the assessee that the jewellery seized by Income-tax department from assessee did not belong to assessee and actually belongs to M/s. Pravin Jewellers. it was further contended that the said jewellery was duly shown in the books of account and stock register maintained by M/s. Pravin Jewellers who had produced all the relevant documents before Commercial Tax Authorities.

Thus, it was claimed that no part of jewellery seized could be assessed in the hands of assessee.

The assessing officer did not accept the evidence and explanation submitted by the assessee vide letter dated 3-8-2000 on the ground that the issue voucher Nos. 118 and 119 were not available with the assessee and were not produced before Police authorities or income-tax authorities on the date of seizure of the said jewellery. Therefore, he concludes that jewellery belongs to assessee and a later date contention of the assessee is merely a make believe version. Thus, the assessing officer added the said sum to the returned income as total undisclosed income.

The assessee, being aggrieved, filed an appeal before the Commissioner (Appeals). On the basis of evidence furnished before the assessing officer, it was claimed that the letter written by Sales Tax Authorities to Income-tax department clearly indicates that the issue vouchers were taken into possession by Police Authorities and these were examined by Sales Tax Authorities. It was also contended that the assessee does not know why the police did not mention about the documents, which were found in the possession of assessee, in the "Mahasar" prepared by them and it is evident from answer to question No. 12 in the statement of the assessee that these documents were handed over to the police. After considering the submissions made by the assessee, the Commissioner (Appeals) had deleted the addition with the following observations "After going through the facts of the case from the assessment order and after going through the submissions made by the AR of the appellant I am of the opinion that the assessing officer was not justified in making an addition of Rs. 36,90,453 under section 69A of the Income Tax Act, 1961 being unexplained investment of jewellery giving reason only that the explanation supported by documentary evidence now filed by the appellant were unacceptable on merit as such documentary evidences in the form of the said issue vouchers were not available with the appellant and hence could not be produced by him before the police authorities and income-tax authorities on the date of seizure of said jewellery on 16-7-1999 and, therefore, it was crystal clear that the jewellery belong to the appellant and the later date contention of the appellant was merely make belief version. It was the duty of the assessing officer to examine and find correctness /genuineness or otherwise of the evidences and documents submitted by the appellant at the time of assessment proceedings, which were the copy of the bill of air ticket, the certificate from Jet Airways, the copies of issue voucher Nos. 118 and 119, the authority letter from Pravin Jewellers, the copy of newspaper cutting and the English translation thereof, the copy of the statement recorded by DDI (Inv.), Cochin, particularly answers to Q No. 11, copy of the letter dated 21-7-1999 written to the DDI enclosing therewith the acknowledgement of returns of income of the appellant as well as his employer Pravinkumar Ramani, Prop. M/s. Pravin Jewellers, the copy of the letter written by the Sales Tax Authorities to the Income-tax department dated 13-8-1999 stating therein that the sales tax department has no objection in release of gold ornaments, the copy of stock book of M/s. Pravin Jewellers for the relevant period, which was produced before the police, sales tax authorities and DDI (Inv.), Cochin, and lastly all the books of account of the employer M/s. Pravin Jewellers, and should have come to the final conclusion whether the said ornaments belong to appellant Shri Rakesh Ramani or his employer M/s. Pravin Jewellers, Prop. Shri Pravinkumar Ramani.

Without discharging the onus cast upon the assessing officer, it was wrong for him to state that such documents were not produced at the time of seizure of the jewellery and hence he was not accepting them now and treating the whole facts as merely a make believe version. All these documents produced before the assessing officer go to prove that the jewellery, weighing 9711.720 gms. Valued at Rs. 36,90,453 belong to M/s. Pravin Jewellers Prop. Mr. Pravinkumar Ramani, who is the employer of the appellant Shri Rakesh Ramani and it is duly reflected in the books of account of M/s. Pravin Jewellers and that the appellant Shri Rakesh Ramani was carrying the said jewellery, in the course of his employment. These facts were known to the police authorities, the sales tax authorities as well as DDI

(Inv.) who had seized the jewcllery, but unfortunately, they did not clearly mention the same and erroneously seized the jewellery, the learned assessing officer also did not bother to verify all these documents and came to the fair conclusion.

Accordingly, the addition of Rs. 36,90,453 made by the assessing officer as investment in unexplained jewellery under section 69A of Income Tax Act, 1961 is hereby deleted." Aggrieved by the above order, the revenue came in appeal before the ITAT and the ITAT decided the appeal on 26-2-2003 and reversed the order of the Commissioner (Appeals) with the following observations "20. We have also perused the Xerox copy of stock register of M/s.

Pravin Jewellers which is placed at pages 54 to 65 of the paper book.

It is noted there from that the stock as on 13-7-1999 was 9620.534 grams, On 14-71999, the assessee has received 1036.150 grams quantity of gold ornaments from one S.M. Jewellers that makes the total quantity held by M/s. Pravin Jewellers at 10656.64. Out of said total quantity M/s. Pravin Jewellers has issued gold jewellery of 9683.330 grams to the assessee leaving balance of only 973.354 grams. It shows that almost all the jewellery in the stock of M/s. Pravin Jewellers was handed over to the assessee for sale and in shop. M/s. Pravin Jewellers had almost nothing. Though the Commissioner (Appeals) has referred to the evidence produced by the assessee but he has not carefully gone through the evidence and straightaway accepted the explanation of the assessee. The Commissioner (Appeals) also did not consider the statement which as we pointed out earlierhas its ownimportance. The assessee did not tell before income-tax authorities the name of M/s.

Pravin Jewellers as he wanted to give time to them to set right the things. In our opinion, in the present case, looking into the evidence sought to be produced, the assessee has not been able to establish beyond doubt that the jewellery found from his possession did not belong to him. It was for the assessee to explain that why at the first instance he did not tell before income-tax authorities that he was simply an employee and holding the said jewellery on behalf of M/s.

Pravin Jewellers specially in view of the claim that documents were prepared in favour of assessee a day prior to interception. The Commissioner (Appeals) has failed to consider this aspect as well as he has accepted the explanation of the assessee on the face value without looking into the evidence produced. The answers given in the statement recorded by the authorized officer and other surrounding circumstances suggest that the assessee carried on illegal /unrecorded business of purchase and sale of gold, inaddition to status as an employee in M/s.

Pravin Jewellers, and utilized undisclosed income inpurchase of such unrecorded jewellery. Therefore, the order of Commissionerof Income-tax (Appeals) is perverse and liable to be set aside. Accordingly, we set aside the order of Commissioner (Appeals) and restore that of the assessing officer." The miscellaneous application is against the above findings of the Tribunal.

In the miscellaneous application the assessee contends that the Tribunal while passing the order confirming the addition made under section 69A of Rs. 36,90,453 has not taken into consideration the following documents : In addition to the above, the assessee brings to the notice of the Tribunal that case laws referred to in the order were neither cited by the learned departmental representative nor reference was to them in the course of hearing.

The assessee, then draws our attention to the evidence which was not taken into consideration while passing the order, which are described below a. The assessee was sent by Jet Airways, tickets purchased by the employer M/s. Praveen Jewellers through Nakoda Travels & Tours dated 14-7-1999 (placed at paper book page 36), which proved that the assessee has gone on behalf of the employer.

b. The place at Ernakulam where the assessee was residing was taken on rent by his employer, M/s. Praveen Jewellers and rent is duly recorded in its books of account (placed at page 44 of paper book), which proves that the assessee had gone on behalf of the employer.

c. In the statement recorded by the department on 17-7-1999, nowhere they have asked about the ownership of jewellery nor the applicant has ever, stated that he is the owner of the jewellery.

d. The assessee, in reply to Q Nos. 11 and 12 of the statement record, has stated that he had some documents in his possession which has been handed over to police. Even the newspaper report revealed that the assessee was carrying some documents of Bombay based jewellers. The Hon'ble Bench has in its last sentence of para 18 at page 15 stated that 'it is not clear from the said replies or newspaper report as to what was the nature of those documents." The assessee mentions that if the statement and newspaper report is read in conjunction with the letter of sales tax authority dated 13-8-1999, it would prove beyond doubt that the applicant was having issue voucher 118 and 119 dated 15-7-1999 and these documents were handed over to police, from whom the sales tax authorities obtained photocopies and also enclosed the photocopies to the DDIT along with letter dated 13-8-1999.

e. The documents relating to the jewellery, which were found by the police, i.e., issue voucher Nos. 118 and 119 were in the name of M/s.

Pravin Jewellers itself, the copy of which were taken by the sales tax authority.

f. The sales-tax authority in its letter dated 13-8-1999 addressed to the income-tax authority clearly stated that the gold ornaments were covered by issue voucher Nos. 118 and 119 dated 15-7-1999, the copies of which were furnished during the course of inspection on 16-7-1999 and were brought by the assessee for sale to various dealers in Cochin.

The photocopy of the issue vouchers were also enclosed with the said letter. This letter is placed at page 30 of the paper book and which has not been considered at all while arriving at the conclusion that the assessee was the owner of the jewellery.

g. At para 20 of page 16 of the order, the Hon'ble Bench observed that almost all the jewellery in the stock was handed over and the shop had almost nothing. The applicant states that firstly, this question was not put forth while arguing the case and secondly, the said M/s. Pravin Jewellers do not have any shop but has a small office of about 140 sq.

ft on 2nd floor, Bhuleshwar Road, Mumbai-2 and further, that most of the sales are made to south India places and there is hardly any sale in Bombay. Hence, the observation that there is no jewellery left for shop is prima facie incorrect and has no bearing on the issue, when M/s. Pravin Jewellers, confirmed that jewellery belong to them.

h. The assessee had also filed copy of acknowledgement of returns for assessment years 1996-97 to 1998-99 showing salary income from M/s.

Pravin Jewellers placed at pages 66 to 77 of the paper book.

i. The employees as stated in the statement at question No. 14, i.e., Shri Bharat and Shri Bhawar Singh were employees of M/s. Pravin Jewellers and that the affidavits of the said employees were also placed on record at pages 22 and 23 of the paper book.

j. Copy of tax audit report, balance sheet, profit and loss account, etc., of M/s. Pravin Jewellers were also filed showing the closing stock inclusive of the stock of jewellery seized by department from the applicant who is employee of M/s. Pravin Jewellers (placed at pages 163, 191 and 214 of paper book).

k. The finding of the Tribunal regarding the assessee carrying on business in addition to being employee of Pravin Jewellers is inferred from its reading of the applicants replies regarding his allegedly doing business (answer to question No. 3), his taking of flat on lease (answer to question No. 7) and his employing two employees, viz., Mr.

Bharat and Mr. Bhawar Singh (answer to question No. 14). However, in fact all evidences were produced and are on record to show that the assessee was employee. The replies to above referred questions were given in context of the applicant considering himself as a part of the management of the family business. The flat is taken on lease by M/s.

Pravin Jewellers and that Mr. Bharat and Bhawar Singh were employees of M/s. Pravin Jewellers (pages 44, 22 and 23 of paper book).

l. The Hon'ble Members cited decisions of Supreme Court in Chuharmal v.CIT (1988)172 ITR 250 (SC) and Sumati Dayal v. CIT(1995) 214 ITR 801(SC) and relying upon them, treated the assessee as owner of the jewellery. The ratio is not applicable to the facts of the case of the assessee.

It is further stated in the miscellaneous application that these decisions of the Hon'ble Supreme Court were neither cited by the department nor the said decisions were brought to the notice of the counsel for the assessee in the course of hearing of the matter by the Members.

It is also stated that though it was the appeal by the department, the applicant has produced all the documents, which were in the possession of the applicant. Nowhere in his statement recorded by the tax authorities, the assessee has admitted that he is the owner of the jewellery whereas on the other hand, M/s. Pravin Jewellers has admitted that they are the owners of the jewellery found in the possession of the assessee and also produced all the necessary evidence for proving the ownership.

It is submitted that burden to prove that jewellery seized belonged to the assessee, lies on the revenue. For this proposition assessee had placed reliance on the following decisions which have not been considered and, therefore, mistake has crept in the order of the TribunalMiss Rose Ben v. Assistant Commissioner v. Shri Om Prakash Khatri v. Dy. CIT IT (SS) Appeal No. 12 /M / 1998, block period 13-11-1985 to 6-12-1996, Bench 'B' order dated 3-1-2001 (paragraphs 15, 16 and 17 finding) 91-112 (1056-111).

Finally, in support of the claim that mistakes have crept in the order, the learned counsel has placed reliance on the following decisions :Frinquick Finance (P.) Ltd. v. Dy. CIT 4. Distributors (Baroda) (P.) Ltd. v. Union of India (1985) 155 ITR 120; (SC),Laxmi Electronic Corpn, Ltd. v. CIT On the other hand, the learned departmental representative submitted that there is no mistake in the order of ITAT. All the issues raised by the assessee have been considered by ITAT.

Regarding the case laws on which reliance was placed by the learned counsel, the learned departmental representative referred to the order of ITAT and submitted that the ITAT has clearly mentioned that all these cases have been considered. Therefore, the assessee's petition for rectification deserves to be rejected.

We have considered the submissions and have perused the entire facts on record, various papers filed in the course of appeal in the paper book and various decisions on which reliance have been placed and before the ITAT at the time of hearing of appeal and before us in the course of hearing of miscellaneous petition. We have also perused various decisions on the issue as to what constitute mistake apparent from record and the principles of law enunciated by various judgments. In our opinion, section 254(2) specifically empowers the Tribunal to rectify and mistake which is apparent from the record. The Tribunal has inherent power to set aside an order deciding an appeal on wrong grounds. The inherent power to rectify a mistake committed by Tribunal is not really speaking a power to review. It is the atonement to the wronged party by the court or the Tribunal for the wrong that it has itself committed. it is a basic principle of jurisprudence that if there is a mistake committed by the Tribunal it needs to be rectified as no one should suffer or come to grief on account of the mistake committed by the Court. Even the rules of procedure and technicalities should not come in the way in rendering the justice to parties by correcting the mistake committed by the Tribunal. The purpose of the Tribunal is to render justice and not to negate it. With this observation, we proceed to decide the miscellaneous application of the assessee.

The principles of law as enunciated by various judgments of the Hon'ble Courts relied upon by the learned counsel for the assessee, and other decisions are summarized as under: 1. That where there is a wrong assumption of facts, it will constitute a mistake apparent from record; 2. That where there is a failure to consider certain evidence brought on record, it would also constitute a mistake apparent from record; and 3. That where there is omission on the part of the ITAT to consider the principles of law enunciated by the decisions of various courts on which reliance is placed by the assessee it will also constitute mistake apparent from record.

In the light of principles of law emerging from various decisions and the provisions of law, if we examine the facts of the present case, we find that mistakes have occurred in the Tribunal's appellate order dated 26-2-2003 as various facts and materials brought on record as referred to by the learned counsel for the assessee as mentioned in para 4.1 of miscellaneous application have not been considered by the Tribunal while deciding the appeal. It has been missed to be considered various principles of law enunciated by various decisions on which reliance was placed by the learned counsel for the assessee. The Hon'ble Madhya Pradesh High Court in the case of CIT v. ITAT(1988) 172 ITR 158 (MP) has held that "if a point which is material for determining the amount of tax so pressed; but not considered by the Tribunal, it would certainly constitute a mistake apparent from record within the meaning of section 254(2) of the Act". As such, considering all the facts and circumstances of the case as also the legal position, we are of the considered view that in the instant case, there has inadvertently been non-consideration of vital facts, brought on record and judicial decisions, cited during arguments of appeal, which all go to the root of the matter and are so crucial as may even till the balance of decision. Accordingly, in passing the Tribunal's impugned appellate order, mistake apparent from record has occurred, rendering the said appellate order of the Tribunal liable to be rectified by essentially recalling the same for passing a fresh order in accordance with law after considering the various facts on record as also the judicial decisions cited by the learned counsel for assessee-petitioner. On this view of ours, we are supported by the decision of the Hon'ble Madhya Pradesh High Court in the case of CIT v.Mithalal Ashok Kumar (1986) 158 ITR 755 (MP) wherein the Hon'ble court has held "the direction for hearing of the appeal did not amount to review in the strict sense of the term". We, therefore, set aside/recall the Tribunal's appellate order dated 26-2-2003 and direct the registry to fix the related appeal for hearing so as to be decided afresh in accordance with law.

In the result, miscellaneous application filed by the assessee is treated as allowed to the extent as indicated above.