Vs Apte and Sons Vs. Acit

Vs Apte and Sons Vs. Acit

SooperKanoon Citation : sooperkanoon.com/75286

Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Oct-27-2006

Reported in : (2007)108ITD501(Mum.)

Judge : U Bedi, S Tiwari

Appellant : Vs Apte and Sons

Respondent : Acit

Judgement :

1. This appeal has been filed by the assessee on 28-02-2005 against the order of learned CIT(A)-XVIII, Mumbai dated 17-02-2004 in case of the assessee in relation to assessment order Under Section 143(3) for assessment year 2000-01.

2. Facts of the case leading to this appeal briefly are that the assessee filed return of income on 31-10-2000 declaring total income at Rs. 2,90,069. According to the assessee in the return of income it claimed set off of brought forward unabsorbed depreciation and business losses of earlier years. The learned assessing officer completed the assessment order Under Section 143(3) on 11-03-2003. There is not a single word in the assessment order in relation to assessee's claim of brought forward losses and unabsorbed depreciation of earlier years.

The assessee thereupon filed an application for rectification Under Section 154 on 16-04-2003. Thereupon the learned assessing officer made an order Under Section 154 wherein he allowed the assessee set off of earlier years' business

losses amounting to Rs. 7,84,628 against business income of the assessee and thus the learned assessing officer assessed business income at Nil. But he assessed Capital gains amounting to Rs. 21,47,998 and Income from other sources amounting to Rs. 13,646 without giving any set off on the ground that unabsorbed business losses and unabsorbed depreciation could be set off against business income only. Aggrieved, the assessee filed appeal before the learned CIT(A). The learned CIT(A) held that whether or not unabsorbed depreciation of earlier years could be set off against capital gains and Income from other sources was an issue on which more than one opinion was possible. The learned CIT(A) therefore held that no rectification Under Section 154 in the nature of set off of unabsorbed depreciation against capital gains and Income from other sources was permissible in relation to proceedings Under Section 154. Still aggrieved the assessee is in appeal before us.

3. During the course of hearing before us the learned Counsel for the assessee argued that the issue stood covered in favour of the assessee and against Revenue by the judgments of Hon'ble Supreme Court and other courts as follows:CIT v. Viramani Industries (P) Ltd The learned Counsel argued that once an issue was decided by the judgment of Hon'ble Supreme Court, that became law of the land under Article 141 of the constitution and put an end to the debate, if any, on that issue prior to delivery of judgment by the Hon'ble Supreme Court. The learned CIT(A) therefore erred in upholding the order of the assessing officer on the ground that it was not a mistake apparent from record.

4. We have carefully considered the rival submissions. That the assessment order made by the learned assessing officer suffered from a mistake apparent from record inasmuch as the learned assessing officer omitted to consider and decide upon the assessee's claim of set off of brought forward business losses and unabsorbed depreciation of earlier years is not in dispute. This aspect has implicitly been admitted by the learned assessing officer himself inasmuch the learned assessing officer has himself iectified Under Section 154 and allowed the assessee set off of business losses amounting to Rs. 7,84,628.

5. Under the provisions of Section 154 any mistake apparent from record is to be rectified. Defining the dimensions of the expression "mistake apparent from record", the Honourable Supreme Court have in their judgment reported in 82 ITR 50(SC) held that any issue on which there can conceivably be more than one opinion or where the mistake is pointed out after a long drawn process of reasoning cannot be said to be a mistake apparent from record. But those observations relate only to the question whether or not an order suffers from a mistake apparent from record. Once a mistake apparent from record is seen, it must be rectified. It is the "mistake" that should be apparent from record and not the "rectification". There is no requirement in the provisions of Section 154 that the rectification also should be apparent from record.

If there is a mistake apparent from record, the rectification thereof may include long drawn reasoning and/or debate. The requirement of "apparent" relates to mistake alone. For illustration, if in a given decision the Tribunal overlooks a ground of appeal taken by the assessee resulting into non adjudication of that ground of appeal that would give rise to a mistake apparent from record. Once pointed out, ground of appeal overlooked has to be adjudicated even if the ground of appeal pertains to a complicated issue on which there maybe considerable debate and long drawn process of reasoning. There is no bar in the provisions of Section 154 to spirited debate and long drawn reasoning, in the process of rectification of a mistake apparent from record. We therefore do not see justification in the contention of the learned CIT(A) that the assessee could not seek a rectification on which there could be more than one opinion. That being so we are of the view that the matter is required to be restored to the file of the learned CIT(A) for a decision on merit as to whether or not the assessee is entitled to claim set off of unabsorbed depreciation against his Income from capital gains and Income from other sources. We direct accordingly.