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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Jan-16-2007

Judge : G Pannu, J Singh

Appellant : Surat Singh

Respondent : ito

Judgement :

1. These six appeals filed by the assessee are directed against the order of the CIT, Faridabad dated 31-3-2005 passed under Section 154 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), relating to assessment years 1994-95 to 1999-2000, whereby an earlier order passed under Section 263 of the Act dated 23-3-2004 has been amended by him.

2. The first and the foremost grievance of the assessee against the order of the CIT passed under Section 154 of the Act is that the same is without jurisdiction and is based on misinterpretation of the provisions of Section 154 of the Act. In order to understand the grievance, brief background is necessary which is as follows.

3. The assessment for assessment years 1994-95 to 1999-2000 was framed by the assessing officer vide orders passed under Section 143(3) read with Section 147 of the Act on 22-3-2002 read with subsequent orders under Section 154 dated 28-3-2002. The aforesaid orders were reviewed by the CIT and were cancelled by invoking the provisions of Section 263 of the Act vide order dated 23-3-2004. The

issue involved was relating to the interest income received by the assessee with regard to the enhanced compensation accruing on acquisition of land by the State Government. The CIT in his order under Section 263 of the Act dated 23-3-2004 directed the assessing officer in all the assessment years to tax the interest income received by the assessee on enhanced compensation on accrual basis i.e. on a year to year basis. Now, the CIT by way of the impugned orders passed under Section 154 of the Act dated 31-3-2005 has amended his earlier order and instead directed the assessing officer to assess the income by way of interest on enhanced compensation on actual receipt basis in the year of receipt of interest from the State. In the present proceedings, the challenge is to the order passed by the CIT under Section 154 of the Act.

4. Before us, the learned Counsel for the assessee has submitted that the CIT has misconstrued and misinterpreted the provisions of Section 154 of the Act which deal only with rectification of the mistakes apparent from record and do not empower him to unsettle propositions of law. The learned Counsel has referred to the paper book wherein is placed chronological list of events and pointed out that the assessee had indeed declared interest income for the year under consideration on accrual basis. Our attention was invited to the order of the CIT passed under Section 263 dated 23-3-2004, specifically to para 7 thereof, to point out that the interest income was offered on accrual basis. It was the assessing officer who had initially in the assessment orders dated 22-3-2002 read with subsequent orders under Section 154 dated 28-3-2002 assessed the interest income on receipt basis. Once the said assessments were found to be erroneous and prejudicial to the interests of the revenue by the CIT under Section 263 on 23-3-2004, subsequently, the CIT could not have made an about-turn and held that interest income was assessable on receipt basis and, in any case, such an action was impermissible having regard to the limited scope of rectification envisaged under Section 154 of the Act.

5. On the other hand, the learned Departmental Representative has at the outset relied upon the order of the CIT passed under Section 154 of the Act. The learned departmental Representative pointed out that subsequent to the action under Section 263 dated 23-3-2004 for assessment years 1994-95 to 1999-2000, CIT

noted that certain amount of interest which pertained to the assessment years 1990-91 to 1993-94 remained untaxed. Therefore, in order to bring to tax the interest pertaining to the assessment years 1990-91 to 1993-94, the CIT amended his order passed on 23-3-2004 under Section 263 to hold that interest income be taxed on receipt basis i.e. in the year of actual receipt.

6. Having considered the rival stand on this issue, in our view, the order passed by the CIT under Section 154 dated 31-3-2005, which is in challenge before us, is not tenable in the eyes of law. This is for the reason that Section 154 of the Act merely empowers an IT authority to amend any order so as to rectify an apparent mistake. Needless to mention that a mistake apparent from record is one which must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions. In other words, where the IT authority has formed an opinion on a legal proposition, taking one view, the same cannot be upset by resorting to Section 154 of the Act for the reason that there is no mistake apparent. In any case, in the instant case, we find that the CIT while passing the order under Section 263 on 23-3-2004 noted that interest on enhanced compensation was to be taxed on accrual basis, i.e., on a year to year basis and this decision was based on the judgment of the Apex Court in the case of Smt. Rama Bai v.CIT . Having taken a decision on the basis of Supreme Court judgment, was the CIT empowered to reverse such an opinion by resorting to the limited scope of Section 154 of the Act. The answer is clearly no because there is no apparent mistake which has been made out by the CIT in his original order. In fact, the Supreme Court in the case of T.S. Balram, Income Tax Officer v. Volkart Bros. & Ors.

has held that a mistake apparent on record must be one which is obvious and patent and does not envisage an element of debate. Much less a debate in the instant case, the original stand of the CIT under Section 263 dated 23-3-2004 is based on Supreme Court judgment and the same remains unaltered. Therefore, it was beyond the power of the CIT to invoke the provisions of Section 154 and direct the assessing officer in his order dated 31-3-2005 to tax the interest on enhanced compensation on actual receipt basis in the year of receipt in contrast to his direction in the order passed originally under Section 263 of the Act to tax

interest on enhanced compensation on accrual basis, i.e. on a year to year basis. We are, therefore, satisfied that the order of the CIT dated 31-3-2005 is impermissible in terms of Section 154 of the Act and is hereby cancelled. The appeals of the assessee accordingly stand allowed.

7. Before parting, we may mention that the plea of the learned departmental Representative that the intent of the CIT to pass order under Section 154 was to bring to tax the interest on enhanced compensation pertaining to the assessment years. 1990-91 to 1993-94.

Clearly, the objective of the CIT was to include for taxation the income pertaining to the assessment years 1990-91 to 1993-94, pertinently all assessment years which are not the subject-matter of the present proceedings. Therefore, the impugned action of the CIT is untenable insofar as it related to the assessment years under consideration. The revenue is at liberty to consider the intendment of the CIT for the relevant assessment years in accordance with the applicable provisions of law, if so advised.

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