SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Bimal Bhatt Vs. Asstt. Cit

Bimal Bhatt Vs. Asstt. Cit

SooperKanoon Citation : sooperkanoon.com/75868

Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Sep-20-2007

Judge : S K Yadav, V Gupta

Appellant : Bimal Bhatt

Respondent : Asstt. Cit

Judgement :

1. This Miscellaneous Application is preferred by the assessee against the order of the Tribunal dated 21-3-2007 with the submissions that while disposing off the appeal, the Tribunal has not considered the paper book filed by the assessee and the written submissions along with the affidavit of the assessee. Since the Tribunal has decided the appeal without appreciating the true facts of the case explained in the written submissions of the assessee, an error has crept in the order of the Tribunal and as such it requires rectification.

2. The Learned Departmental Representative, on the other hand, has invited our attention that the Tribunal has examined the issue in the light of the material placed before it. Since the Tribunal has deliberated the impugned issue in its order in detail, it cannot be reviewed under Section 254(2) of the Income Tax Act as the scope of this section is very limited and rectification is permissible only on arithmetical, clerical error and an error which is apparent from the record.

3. Having heard the rival submissions and from careful perusal of the Miscellaneous Application vis-a-vis the order of the Tribunal, we find that during

the course of hearing of this appeal on 8-3-2007, request for adjournment was made without assigning any specific reason. The Tribunal has taken cognisance of the stand taken by the assessee for adjournment and finding no merit therein, the Tribunal rejected the adjournment petition and heard the appeal.

4. The issue involved in this appeal was with regard to certain credit entries found in the accounts of the assessee. During the course of hearing of the appeal, a specific query was raised from the learned Counsel for the assessee to explain the cash deposited in the impugned account and also of the encashment of cheques. But the learned Counsel for the assessee remained silent and did not explain the source of cash deposit in the bank account. In the absence of proper co-operation from the learned Counsel for the assessee, the Tribunal itself has examined the orders of the lower authorities and the written submissions filed by the assessee in the light of revenue's contention. Though the assessee has filed enormous documents running into more than 300 pages along with affidavit running into 95 pages but during the course of hearing, the learned Counsel for the assessee remained silent and did not refer any of the documents in support of his contention. Even the queries raised by the Tribunal were also not properly replied by the counsel of the assessee whereas it is the duty of the professional or advocate to represent the party sincerely and to point out the relevant documents during the course of hearing of the appeal. The duty cast upon him shall not be discharged by filing of the documents before the Tribunal without pointing out its relevancy to the controversy raised in the appeal. Moreover, it is not possible for the Tribunal to examine each and every document filed before it. The Tribunal can examine only those documents which are referred during the course of hearing of the appeal. This is a peculiar case in which the assessee has filed a bundle of documents but none of the documents was referred during the course of hearing.

5. The Tribunal however considered the written submissions filed by the assessee and other material on record and examine the orders of the lower authorities and deliberated the issue in its order in 10 pages.

The Tribunal deliberated each and every aspect on which the additions were sustained by the lower authorities.

6. Now through this miscellaneous application, the assessee wants the Tribunal to re-appreciate the evidence placed before it and to adjudicate the issue afresh. The powers of the Tribunal under Section 254(2) is very limited and the Tribunal has limited jurisdiction of rectification in its order if an error is crept therein which is apparent from the face of the record. Re-appreciation of the evidence placed before the Tribunal during the course of hearing is not permissible to re-adjudicate the issue afresh under the garb of rectification. "The scope of Section 254(2) of the Act has been repeatedly examined by the Apex court and various High Courts and it was held that if the Tribunal commits an error of judgment, that error cannot be rectified under the provisions of Section 254(2) of the Act as the Tribunal is not empowered by the statute to review its own order. In the case of CIT v. Vardhman Spinning their Lordships of the Punjab and Haryana High Court have held in specific terms that the Appellate Tribunal is creation of statutes and it can exercise only those powers which have been conferred upon it. The only power conferred on the Tribunal under Section 254(2) of the Income Tax Act, 1961 is to rectify any mistake apparent from record. The jurisdiction to review or modify orders passed by the authorities under the Act cannot be interfered with on the basis of supposed inherent rights. Under Section 254(1) of the Act, the Appellate Tribunal, after hearing the contesting parties, can pass such order as it deems fit.

Section 254(2) of the Act specifically empowers the Appellate Tribunal at any time within four years of the date of an order to amend any order passed by it under Section 254(1) of the Act with a view to rectify any mistake apparent from record either suo motu or on an application made. What can be rectified under this section is a mistake which is apparent and patent. The mistake has to be such for which no elaborate reasons or inquiry is necessary. Where two opinions are possible, then it cannot be said to be an error apparent on the face of the record.CIT v. Suman Tea & Plywood Industries (P) Ltd. their Lordships of Calcutta High Court have expressed similar observations after holding that under Section 254(2) of the Income Tax Act, an order, which has been passed by the Tribunal reaches finality the moment the same is passed; cannot be touched thereafter.

By Section 254(2) of the Act, the Tribunal, however, has been authorized to rectify mistakes in its orders, which are apparent on the face of the records. The

expression 'mistake apparent on the record' means a mistake either clerical or grammatical or arithmetical or of like nature, which can be detected without there being any necessity to reargue the matter or to reappraise the fact as appearing from the records. In another case CIT v. Gokul Chand Agarwal (1993) 202 ITR 142 (Cal) their Lordships of Calcutta High Court have also held that Section 254(2) to the Income Tax Act, 1961 empowers the Tribunal to amend its order passed under Section 254(1) to rectify any mistake apparent from the record either suo motu or on an application. If in its order there is no mistake which is patent and obvious on the basis of the record, the exercise of the jurisdiction by the Tribunal under Section 254(2) will be illegal and improper. An oversight of the fact cannot constitute an apparent mistake rectifiable under Section 254(2).

This might, at the worst, lead to perversity of the order for which the remedy available to the assessee is not under Section 254(2) but a reference proceedings under Section 256. The normal rule is that the remedy by way of review is a creature of the statute and unless clothed with such power by the statute, no authority can exercise the power.

Review proceedings imply proceedings where a party, as of right, can apply for reconsideration of the matter, already decided upon, after a fresh hearing on the merits or the controversy between the parties.

Such remedy is certainly not provided by the Income Tax Act, 1961, in respect of proceedings before the Tribunal.

8. The Hon'ble High Court of Allahabad in the case of CIT v. ITAT (1997)93 Taxman 123 (All) has held that Sub-section (1) of Section 254 confers ample powers on the Tribunal to pass such orders in any appeal filed before it as it thinks fit. "Sub-section (2) of Section 254 postulates that the Tribunal may amend any order passed by it under Sub-section (1) of Section 254 with a view to rectifying any mistake apparent from the record. The power of the Tribunal conferred by Sub-section (2) of Section 254 for rectifying any mistake apparent from the record cannot be exercised by the Tribunal to recall any order passed by it under Section 254(2). Further, reviewing and recalling an order is one thing and rectifying a mistake in the order which is apparent from the record is quite another. In the

absence of any statutory provision for review by Tribunal, the order passed by the Tribunal cannot be recalled or reviewed under Section 254(2) of the Act." The provisions of Section 254 were also examined by the Hon'ble High Court of Madhya Pradesh in the case of Prakash Chand Nahta v. CIT in which their Lordship have held that scope of Section 254(2) of the Income Tax Act is very limited and it is only the apparent error which can be rectified.

9. Their Lordships of the Apex Court in the case or T.S. Balaram, ITO v. Volkart Bros. have held that a mistake apparent on the record 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 be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from record. Their Lordships have further held that if a statement of any person has been recorded without producing him in the witness box, the authorities should not act upon that statement without affording the assessee an opportunity to cross-examine the witness, but that is a matter not for rectification but it is a matter relating to the merits of the case as to whether the Tribunal has gone wrong in not considering the affidavit of a particular person and has acted upon the statement of the same person which was recorded by the Income Tax Officer without being permitted to cross-examine by the assessee. This is not a matter in which the apparent error is involved but it is a matter more of merit and cannot be rectified within the scope of rectification. The powers of the Tribunal while makings a rectification were again examined by the Apex court in the case of CIT v. Hero Cycles (P) Ltd. in which their Lordships have held that rectification can only be made when a glaring mistake of fact or law committed by the officer passing the order becomes apparent from record. Rectification is not possible if the question is debatable. Moreover, a point which was not examined on facts or in law cannot be dealt with as mistake apparent from record. In the case of ITO v. ITAT their Lordships of Patna High Court have also expressed a similar observation after holding that Section 254(2) of the Act empowers the Tribunal to amend any order passed by it under Sub-section (1) with a view to rectifying a mistake from record. However, Section 254(2) does not authorize the Tribunal to review its order or to sit in appeal over its earlier order. If it is done, it would amount to an amendment of an earlier order with a view to rectify a mistake apparent from record, but it would be

an order passed on re-appraisal of the material facts and circumstances and on a fresh application of the legal position, which is not permissible within the scope of Section 254(2) of the Act.

10. In the case of Deeksha Suriv. ITAT (1998) 232 ITR 3952 (Del) their Lordships of Delhi High Court have held in specific terms that "the Income Tax Appellate Tribunal is a creature of the statute. It has not been vested with the review jurisdiction by the statute creating it.

The Tribunal does not have any power to review its own judgments or orders. The grounds on which the courts may open or vacate their judgments are generally matters which render the judgment void or which are specified in the statutes authorizing such sections. The language of Section 254(2) of the Income Tax Act, 1961 is clear. The foundation for the exercising the jurisdiction is 'with a view to rectify any mistake apparent on the record' and the object is achieved by 'amending any order passed by it'. A mistake apparent on the record 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 be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent on the record.

11. Similar views have also been expressed by the Gauhati High Court in the case of CIT v. Prahlad Rai Todi by holding that "A bare look at Section 254(2) will show that this section gives the power to rectify any mistake apparent from the record and not to amend any order passed by it and to make such amendment if the mistake is brought to its notice by the assessing officer or the assessee. So, when we speak of amendment or rectifying the mistake the earlier order can never be recalled by the Tribunal. The earlier order must hold the field and the mistake can be rectified or amended can be made to the order. The Tribunal cannot, in law and facts, recall and destroy its final order as a whole with a view to rectify the same order under Section 254(2) of the Act. The action of the Tribunal actually amounts to review of its earlier order and that power to review is not available to the Tribunal.

12. In the light of the above proposition of law with regard to scope of Section 254(2) of the Income Tax Act, we are of the considered opinion that in the instant case the Tribunal has deliberated the issue in detail and has examined all aspects. Since we do not find any error apparent from the record, the order of the Tribunal cannot be rectified. If it is done it amounts to a review of the order of the Tribunal which is not permissible under Section 254(2) of the Income Tax Act. Accordingly, the Miscellaneous Application of the assessee stands dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com