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Court : Kolkata

Decided On : Dec-08-2000

Reported in : [2001]249ITR491(Cal)

Judge : Kalyan Jyoti Sengupta, J.

Acts : Income-tax Act, 1961 - Sections 36, 40A, 40A(9), 143, 143(3), 154 and 155;
;Industrial Employment (Standing Orders) Act, 1946

Appeal No. : W.P. No. 1618 of 1988

Appellant : Bata India Ltd.

Respondent : inspecting Assistant Commissioner of Income-tax and ors.

Advocate for Def. : Ram Chandra Prasad, Adv.

Advocate for Pet/Ap. : R.N. Bajoria, Sr. Adv.

Judgement :

Kalyan Jyoti Sengupta, J.

1. In this writ petition, the petitioner has challenged a notice dated August 10, 1988, issued under Section 154/155 of the Income-tax Act, 1961, whereby

assessment order dated June 20, 1984, under Section 143(3) for the assessment year 1982-83 is sought to be amended as there is a mistake apparent from the records within the meaning of Section 154/155 of the Income-tax Act, 1961. The object behind the notice is to enhance the assessment for increasing the liability. The nature of the mistake proposed to be rectified has been given that a sum of Rs. 12,69,760 being the amount paid to the Bata Workmen Sickness Benefit Society was wrongly allowed.

2. Mr. Bajoria, learned senior counsel appearing for the writ petitioner, contends that the notice under the aforesaid section is bad in law as the assessment order in the name of rectification of the mistake cannot be reopened. The scope and purview of Section 154/155 is very limited and this can only be exercised where the mistake is apparent on the face of the record upon a plain reading of the assessment order. If there is any scope for further enquiry and reconsideration of any materials then the aforesaid section is of no help. In substance, he contends, while applying the aforesaid Section 154/155, the officer concerned is to look into the order only and nothing else. In this context, he relies on a decision of a learned single judge of this court delivered in the case of *Coates of India Ltd. v. Dy. CIT (No. 2.)* : [1995]214ITR504(Cal) . He also refers to a Division Bench judgment of this court while examining the scope and purview of Section 154/155 of the Income-tax Act, reported in *ITO v. India Foils Ltd.* : [1973]91ITR72(Cal) . He has drawn my attention to the Supreme Court judgment on the aforesaid section reported in *T. S. Balaram, ITO v. Volkart Brothers* : [1971]82ITR50(SC) .

3. He contends that on previous occasions and even on occasions subsequent to this assessment order, the Department concerned did not question the allowance of deduction of the aforesaid expenditure incurred for paying the Bata Workmen Sickness Benefit Society. He has drawn my attention to the learned Tribunal's judgment which has accepted the contention of the writ petitioner that the aforesaid deduction is allowable.

4. Mr. Bajoria also contends on the merits that under Section 40A, subsection (9), read with Section 36 of the Income-tax Act, the petitioner is entitled to deduction, as aforesaid, as under the Industrial Employment (Standing Orders) Act, 1946, a

standing order has certified for making a provision for payment of the aforesaid amount on account of the medical benefit to the workmen.

5. If this is the position then the petitioner, as a matter of right, under Section 40A, Sub-section (9), is entitled to get such deduction and so the deduction has been allowed for the relevant assessment order. Therefore, there is no scope for any error being committed on the face of the records. It is not a patent error. As such there was no jurisdiction vested upon the authority concerned to issue any notice, unless there had been a patent error on the assessment order. Therefore, on the merits, he contends this notice is liable to be set aside since there is no foundation at all.

6. Mr. Ram Chandra Prasad, learned counsel appearing for the respondents, in his usual eloquence contends otherwise and says citing a Full Bench decision of the Patna High Court, reported in CIT v. Sheo Kumari Debi : [1986]157ITR13(Patna) that the court should not look into the provisions of law as it is. The court should go into the details as to whether the section is to be made applicable substantially or not. He has laid emphasis on the last paragraph of this judgment saying that the principle followed by the courts during the British regime should not be followed by this court after Independence. The Income-tax Act was framed during the British period in order to subserve the interest of British imperialism and this fiscal statute in free India should be given for the benefit of the Revenue as the Revenue will go to the public exchequer.

7. Having heard learned counsel and considering the materials placed before me, a question arises here as to whether the respondent concerned is justified in issuing this notice dated August 10, 1988, purporting to remove an alleged mistake in the assessment order being passed for the assessment year 1982-83 allowing deduction of the amount paid to the Bata Workmen Sickness Benefit Society.

8. Before I examine this, it is appropriate to quote Section 154 of the said Act.

'With a view to rectifying any mistake apparent from the record, an income-tax authority referred to in Section 116 may,--

(a) amend any order passed by it under the provisions of this Act;

(b) amend any intimation sent by it under Sub-section (1) of Section 143, or enhance or reduce the amount of refund granted by it under that sub-section.

(1A) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in Sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.

(2) Subject to the other provisions of this section, the authority concerned-- . . . '

9. On a plain reading of the aforesaid section it will appear that the said section can be invoked only for the purpose of rectifying any mistake apparent from the record. In the notice itself nowhere has it been mentioned what is the apparent and patent mistake occurring in the order of assessment. The impugned notice stipulates that the deduction allowed in favour of the assessee-writ petitioner on account of sickness benefit society is wrongly allowed. So, the intention of the officer is to decide whether deduction was allowed wrongly or rightly. The logical conclusion on reading of the aforesaid notice is that the concerned officer will sit in judgment upon the assessment order. In my view, this officer cannot do so in the garb of rectification of mistake. This cannot be termed and construed to be a patent mistake. The Supreme Court decision on this point has laid down in the case of T. S. Balaram, ITO v. Volhart Brothers : [1971]82ITR50(SC) amongst others that, (i) it was not open to the Income-tax Officer to go into the true scope of the relevant provisions of the Act in a proceeding under Section 154 of the Act, (ii) 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 conceivably be two opinions. A decision on a debatable point of law is not a mistake apparent from the record, and (iii) the power of the officers mentioned in Section 154 of the Act to correct any mistake apparent from the record is undoubtedly not more than that of the High Court to entertain a writ petition on the basis of an error apparent on the face of the record.

10. The aforesaid judgment is applicable very much to decide this case. I have observed that the alleged mistake given pertains to reopening and/ or correctness and incorrectness of the assessment order. The learned single judge of this court has adopted the same view in the aforesaid case reported in Coates of India Ltd. v. Dy. CIT (No. 2) : [1995]214ITR504(Cal) wherein Justice Ruma Pal held that when the issue was debatable notice could not be issued under Section 154 and the Assessing Officer could not decide it under Section 143. The Division Bench of this court in ITO v. India Foils Ltd. : [1973]91ITR72(Cal) , has examined the scope of Section 154. It is held amongst others that the mistake defined in the aforesaid section must be apparent on the face of the records. It must be an obvious, clear and patent mistake. One which is not apparent and requires long and elaborate reasoning and arguments on points on which there may conceivably be two opinions could not be mistake apparent from records. In this case, I am afraid, if this notice is allowed to be proceeded with and the so called patent mistake is allowed to be rectified pursuant to the notice then, there will be an occasion to reopening of this assessment order resulting inevitably in a debatable issue. Therefore, I hold on the facts and circumstances of this case that the impugned notice ought not to have been issued.

11. Mr. Prasad's contention citing the judgment of the Division Bench of this court on this point is of no help in view of the Supreme Court decision, as above and so also the earlier Division Bench judgment. The Division Bench judgment cited by Mr. Prasad was passed without considering the aforesaid prior Supreme Court decision. In view of the previous Supreme Court decision on the same subject, contrary Division Bench judgment albeit later, is no longer a good law and the same cannot bind me. So, I can safely ignore the later Division Bench judgment reported in CIT v. E. Sefton and Co. (P.) Ltd. : [1989]179ITR435(Cal) .

12. Besides, on the merits, the materials which are unimpeachable in character produced before me, I am satisfied that the petitioner has been given deduction lawfully and on a justified ground. The certified standing order has been produced before me and in terms of the certified standing order the assessee-writ petitioner has paid the aforesaid fund for the medical benefit of the employee to another body. In the previous assessment years, deduction of the same head has been

allowed. There was no question about it. There is neither any subsequent development nor any occasion to depart from the stand taken by the Department on earlier occasions.

13. In such circumstances, the contention of Mr. Prasad is not acceptable to me either in law or on fact. I decide this question on the facts inasmuch as the documents produced before me are undisputed and unimpeachable in character. So, I hold that the notice is non est and this has been illegally issued and the same is liable to be and is hereby set aside.

14. There shall, however, be no order as to costs.

15. Let xerox copies of this judgment and order duly signed by the Assistant Registrar of this court be made available to both the parties upon their usual undertaking to apply for and obtain certified copies thereof on payment of usual charges.

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