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**Court :** Kolkata

**Decided On :** Dec-08-2000

**Reported in :** (2001)167CTR(Cal)14

**Appeal No. :** Writ Petn. No. 1618 of 1988 8 December 2000 A.Y. 1982-83

**Appellant :** Bata India Ltd.

**Respondent :** Iac and ors.

**Advocate for Pet/Ap. :** R.N. Bajoria & J.P. Khaitan, *for the Assessee Ram Chandra Prasad, for the Revenue*

**Judgement :**

Sengupta, J. :

In this writ petition the petitioner has challenged a notice dated 10-8-1988, issued under sections 154/155 of the Income Tax Act, 1961, whereby assessment order dated 20-6-1984, under section 143(2) for the assessment year 1982-83 sought to be amended as there is a mistake apparent from the records within the meaning of sections 154/155 of the Income Tax Act, 1961. Object behind notice is to enhance the assessment for increasing 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 Bata Workmen Sickness Benefit Society was wrongly allowed.

2. Mr. Bajoria, learned senior counsel appearing for the writ petitioner, contends that 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 sections 154/155 is very limited and this can only be exercised where the mistake is apparent on the face of the records upon 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 concern is to look into the order only and nothing else. In this context he relies on a decision of learned Single Judge of this court delivered in case of Coates of India Ltd. v. Dy. CIT & Ors. : [1995]214ITR504(Cal) . He also refers to a Division Bench judgment of this court while examining the scope and purview of sections 154/155 of the Income Tax Act, rendered in the case of Income Tax Officer & Anr. v. India Foils Ltd. : [1973]91ITR72(Cal) . He has drawn my attention to the Supreme Court judgment on the aforesaid section in the case of T.S. Balaram, I TO v. Volkart Bros. : [1971]82ITR50(SC) .

He contends that on previous occasion and even on occasion subsequent to this assessment order the department concerned did not question the allowance of deduction of the aforesaid expenditure incurred for paying Bata Workmen Sick Benefit Society. He has drawn my attention to the learned Tribunals judgment which has accepted the contention of the writ petitioner that the aforesaid deduction is allowable.

3. Mr. Bajoria also contends on merit that under section 40A, sub-section (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, 19 a standing order has certified for making a provision for payment of aforesaid amount on account of the medical benefit to the workmen.

If this being 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 record. 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 merit, he contends this notice is liable to be set aside since there is no foundation at all.

4. 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, 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 principle followed by the courts during British regime should not be followed by this court after independence. The Income Tax Act was framed during 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.

5. Having heard the learned counsels and considering the materials placed before me, a question arises here as to whether the respondent concerned is justified in issuing this notice dated 10-8-1988, purporting to remove alleged mistake in the assessment order being passed for the assessment year 1982-83 allowing deduction of the amount paid to Bata Workmen Sickness Benefit Society.

6. 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 provision 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.

Section 154(2) Subject to the other provisions of this section, the authority concerned.....'

7. 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 records. In the notice itself nowhere it has 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. Logical conclusion on reading of the aforesaid notice is that the concerned officer will sit upon the judgment of 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. Supreme Court decision on this point has laid down in the case of T.S. Balaram I TO v. Volkart Bros. (supra) 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 proceedings under section 154 of the Act, (ii) a mistake apparent on the record must be 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 officer 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.

8. 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 of Coates India Ltd. (supra) wherein justice Ruma Pal held (0.61) that when the issue was a debatable the notice could not be issued under section 154 and the assessing officer could not

decide under section 143. Division Bench of this court in : [1973]91ITR72(Cal) (supra) has examined the scope of section 154. It is held amongst others that mistake defined in the aforesaid section must be apparent on the face of the records. It must be obvious, clear and patent mistake. One which is not apparent and requires long and elaborate reason then remains points on which there may conceivably be two things which 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 debatable issue. Therefore, I hold on the facts and circumstances of this case the impugned notice ought not to have been issued.

9. Mr. Prasads 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 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 CIT v. E. Sefton & Co. (P) Ltd. : [1989]179ITR435(Cal) .

10. Besides, on merit, 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 an other 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 occasion.

In such circumstances, contention of Mr. Prasad is not acceptable to me either in law or on fact. I decide this question on fact in as much as the documents produced before me are undisputed and unimpeachable in character. So I hold the

notice is non est and this has been illegally issued and the same is liable to be and is hereby set aside.

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

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