

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 31-01-2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

TAX CASE (APPEAL) No.206 OF 2003

Commissioner of Income Tax,
Salem. Appellant

-vs-

Nonmag Wires Pvt.Ltd.,
Hosur. Respondent

Appeal against the order of the Income Tax Appellate Tribunal Madras 'B' Bench, dated 25.03.2003, in ITA No.943/Mds/1999 for the Assessment year 1994-95.

against the order of the Commissioner of Income Tax (Appeals) II, 121 Mahatma Gandhi Road, Chennai IT/WT/GT.Appeal No.707-C/97-98, dated 16.3.1999 against the order of the Deputy Commissioner of Income Tax, Special Range Salem 7, dated 24.2.1997 in G.I.no.101/DC/SR/SLM/94-95.

For appellant : Mrs.Pushya Sitaraman

For respondent : Not ready in notice.

J U D G M E N T

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

This appeal is by the Revenue, challenging the order of the Tribunal, on the question of rectification made to restrict the unabsorbed business loss to the extent of business income only.

2. The case of the revenue is that the assessment of the assessee was originally completed under Section 143 (1) (a), by disallowing set off of the unabsorbed loss and depreciation.

3. The assessment was taken up for rectification on the view that the assessee could set off of carry forward loss only to the extent of business income and that only the carried forward

depreciation loss could be adjusted against the short terms capital gains. On notice, the assessee contended that the losses relating the earlier years were determined and allowed to be carried forward for setting off against the taxable income and, as such, the assessment was rightly done. The Assessing Officer rejected the contention of the assessee and rectified the assessment. The assessee preferred an appeal before the Commissioner of Income Tax (Appeals) and submitted before the Appellate Authority that the proceedings under Section 154 were not maintainable, since the issue sought to be touched under section 154 was an arguable issue, not amenable to Section 154. The assessee submitted that there was no error, requiring rectification. In view of the conflicting views expressed in several of the decisions relating to similar claim, the assessee further submitted that it was not open to invoke the provisions under Section 154.

4. Accepting the plea made by the assessee, the Commissioner of Income Tax (Appeals) allowed the appeal and cancelled the rectification. Aggrieved of the same, the Revenue preferred an appeal before the Tribunal and, by an order dated 25.03.2003, the Tribunal agreed with the view expressed by the Commissioner that considering the conflicting views on this question, the error was not a rectifiable error, amenable to Section 154 of the Income Tax Act. Consequently, the appeal by revenue was dismissed. Aggrieved, the Revenue has preferred the present appeal before this Court.

5. Learned Standing Counsel appearing for the Revenue submits that when the assessment is apparently contrary to the law, it could not be said that there existed arguable points, to take the proceedings outside the scope of Section 154; even otherwise, if the power is traceable to any of the provisions of the Act, the order could not be said to be bad in law.

6. Per contra, learned counsel for the respondent/assessee submitted that given the jurisdiction under Section 154, considering the fact that there were conflicting views and the arguable issue before the Assessing Officer, the provisions of Section 154 were not available for purposes of correcting any error apparent. In any event, the decision on the question of set off came much later to the proceedings taken under Section 154 and hence this was total lack of jurisdiction under Section 154. It is further submitted that considering the scope of Section 154 and the failure to exercise jurisdiction under any other provision, any reference, at this stage to any other provisions of the Act to draw support would be totally unjustified, since the contemplation was never to bring it under any other Section, other than Section 154. In the circumstances, it is submitted that the order of the Tribunal should be confirmed.

7. It is an admitted case, that on the date of proceedings taken under Section 154, there were conflicting opinions on the question of working of relief under Section 115 (J). Admittedly, the officer embarked on only under Section 154 to correct the assessment, which, according to him, was erroneous. With such a view in contemplation and aware of the jurisdiction available under the Act to correct the fundamental error, the proceedings taken under Section 154 are totally unjustified.

8. We agree with the contention of the assessee that when the order was passed in no unmistakable terms referring to Section 154, the plea of the appellant to sustain the order of assessment under any of the provisions of the Act cannot be accepted.

9. It must be noted that the jurisdiction to correct a mistake under Section 154 is a limited one, in the sense that the debatable issue, including a point of law, is not a mistake apparent from the record. While interpreting the scope of Section 154 of the Act in the case of BALARAM (T.S.), ITO Vs. VOLKART BROTHERS reported in [1971] 82 ITR 50, it was held that a mistake apparent on the record within the meaning of Section 154 of the Act must be "obvious" and "patent" and not something which could be established by long drawn process of reasoning of issues on points on which there may be more than one reason. A decision on a debatable point of law certainly is not a mistake apparent from the record.

10. In the recent decision of this Court reported in [2004] 265 ITR 479 (COMMISSIONER OF INCOME TAX Vs. INDIA CEMENTS LTD.), this Court, while considering the disallowance under Section 43B on the sales tax collected and shown as outstanding liability, held that this was a case wherein it could not be said that only one view was possible on the facts, hence, it could not be said that it was a mistake apparent from the records, which called for exercise of the power of jurisdiction under Section 154 of the Act.

11. This Court, in the recent decision reported in [2006] 283 ITR 200 (COMMISSIONER OF INCOME TAX Vs. SESHASAYEE PAPER AND BOARDS LTD.), to which one of us is a party, held that the question of relief under Section 80 HHC of the Act as regards the losses to be deducted from the profit available was a debatable issue which did not fall within the purview of prima facie adjustment under Section 143(1)(a) of the Act which could be taken up for consideration only in the regular assessment under Section 143(3) and not under Section 154 of the Act to rectify the intimation under Section 143(1)(a) of the Act.

12. In the light of the interpretation made by the Apex Court having regard to the admitted fact that the claim itself was considered and settled long after the invoking of the jurisdiction under Section 154 of the Act in the decision reported in Karnataka Small Scale Industries Development Corporation Ltd. v. CIT, reported in (2002) 258 ITR 770, we do not find any justification to accept the plea of the Revenue. Consequently, the appeal fails and is, accordingly, dismissed. No costs.

dixit

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Asst Registrar,
the Income Tax Appellate Tribunal,
"B" Bench Madras.

2. The Commissioner of Income Tax,
(Appeals II) 121, Mahatma Gandhi Road,
Chennai.

3. The Deputy Commissioner of Income Tax,
Special Range, Salem 7.

4. The Assistant Registrar,
Income Tax, Appellate Tribunal, सत्यमेव जयते
Rajaji Bhavan, III floor,
Besant Nagar, Chennai 90.

5. The Commissioner of Income Tax,
Salem.

+ 1 cc to Mr. M. muralikumar, Senior Standing Counsel for Income
Tax Chennai 14 SR no. 5749

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