



(6)

THE HIGH COURT OF DELHI AT NEW DELHI

ITA.No. 212/2003

Judgment delivered on: 11.10.2004

OM PRAKASH BHOLA

...Appellant

- versus -

COMMISSION OF INCOME-TAX, NEW DELHI

...Respondent

Advocates who appeared in this case:

For the Appellant : Mr P.N. Monga with Mr Manu Monga and Mr Navneet Negi.

For the Respondent : Mr R.D. Jolly

CORAM:-

HON'BLE MR JUSTICE B.C. PATEL, CHIEF JUSTICE

HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

B.C. PATEL, CJ (ORAL)

1. Admit.
2. The following question of law at the instance of the assessee is required to be determined by this court in the present appeal preferred by the assessee u/s 260 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") :

"Whether the Income Tax Appellate Tribunal



was correct in law in holding that the order impugned before it was rectifiable under Section 154 of the Income-tax Act, 1961 by the Commissioner of Income Tax (Appeals) when the order was subject matter of an appeal before the Tribunal? "

3. At the request of the learned counsel appearing for the parties, we are disposing of this appeal finally.

4. Against the appellate order made by the Commissioner of Income-tax (Appeals) on 28.01.1997, an appeal preferred by the Revenue (being ITA.No.2013/De/97) for the Assessment year 1993-94, was pending before the Tribunal at the time when the CIT (Appeals) made an order on 04.06.99 u/s 154 of the Income Tax Act. And, in view of this order it appears that the Tribunal also disposed of the said appeal by an order dated 10.02.2003.

5. By an order dated 28.01.97, the Commissioner of Income-tax disposed of the appeal finally in favour of the assessee against which the Revenue preferred an appeal as aforesaid. During the pendency of the appeal referred above, the Commissioner of Income-tax (Appeals) in purported exercise of powers under Section 154 of the Act passed another order on



04.06.99 whereby the appeal preferred by the assessee was held to be invalid, although the said appeal was subject matter of appeal before the Tribunal.

6. The assessing officer, drew the attention of CIT (Appeals) vide letter dated 12.01.98 to the effect that the admitted tax on the returned income is not paid as per requirement of sec 249(4) (a) of the Act much after the CIT (Appeals) disposed of the appeal on 28.01.97 against which appeal preferred by the revenue was pending before the Tribunal,. After the appeal was decided in favour of the assessee and during the pendency of appeal before the Tribunal such request was made and the CIT (Appeals) after long hearing by a detailed order held that the appeal was invalid and dismissed the appeal.

7. Against the said order the assessee preferred an appeal being ITA. No. 3648/Del/99 which was dismissed by the Tribunal by a detailed order dated 28.11.2002, and, hence the present appeal.

8. In a case like this, the ground could have been taken



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before the Tribunal that appeal filed by the assessee was not maintainable inasmuch as, as contemplated u/s 249(4) of the Act, the appeal could not have been admitted or could not have been entertained on merits in view of specific language of Sec 249(4) (a) of the Act.

9. It may be noted that there is a complete recall of the order made by the Appellate Officer earlier. Section 154 of the Act reads as under:-

"154 [(1) 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 or deemed intimation under sub-section(1) of section 143.]"

10. Section 254 (2) is also required to be considered at this juncture. Section 254(2) reads as under:

"(2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section(1), and shall make such amendment if the mistake is brought to its notice by the assessee or the [Assessing] Officer."



11. Before this court in the case of Director of Income-tax International Taxation, New Delhi v. M/s Dumez-Sogea-Borie Sae in Appeal No.154/2003 decided on 21.9.2004, the question which was framed before the court was as under:

"Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal exceeded its jurisdiction by recalling the order on an application under Section 254(2) and in passing the impugned order?"

12. We examined the question in para 2 of the aforesaid judgment which reads as under:

"2. The decision is reported in 269 ITR 371 in the case of Commissioner of Income-Tax v. Vichitra Construction (P) Ltd. The question requires no more discussion as the same is covered by the decision and we have held as under:-

"In view of the provisions and judicial pronouncement indicated hereinabove, we are of the view that the power to rectify a mistake under section 254(2) cannot be used for recalling the entire order. No power of review has been given to the Tribunal under the Income-tax Act. Thus, what it cannot do directly, cannot be allowed to be done indirectly. If the assessee was aggrieved, it was open for him to approach the appropriate forum but the Tribunal could not have



reviewed the entire judgment delivered by it earlier in the garb of exercising its power under section 254 (2). Accordingly, the answer is required to be given in favour of the Revenue and against the assessee."

13. That was with regard to the powers to be exercised by the Income-tax Appellate Tribunal. However, reading the language of Section 154 and 254, it appears that there is not much difference between the two and the same principle would apply. In view of what is stated hereinabove the question is answered in favour of the assessee and against the revenue. The order made by the CIT (Appeals) u/s 154 of the Act on 04.06.99 and the order made by the Tribunal on 28.11.2002 Annexure 'E' passed in appeal No.3648/Del/99 are set aside. It is directed that the Income-tax Appellate Tribunal, which has disposed of the appeal on 10.02.2003 being ITA. No. 2013/Del/97 for assessment year 1993-94 between the same parties in respect of the order dated 28.01.1997, shall hear afresh in accordance with law.

Belair
CHIEF JUSTICE

Badar Durrez Ahmed
BADAR DURREZ AHMED, J

October 11, 2004

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