



(37)

IN THE HIGH COURT OF DELHI

I.T.A. No. 214/2005

Judgment reserved on : April 08, 2005

Date of Pronouncement : May 05, 2005

The Commissioner of Income Tax
Delhi-IV, C.R. Building,
New Delhi.

...Petitioner
through: Mr. R.D. Jolly, Advocates.

Versus

M/s. Hindustan Cycles & Tubes Ltd.
M-52, Rajouri Garden,
New Delhi.

...Respondent
through : NEMO.

CORAM :

HON'BLE MR. JUSTICE SWATANTER KUMAR

HON'BLE MR. JUSTICE MADAN B. LOKUR

1. Whether reporters of local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be referred in the Digest?



SWATANTER KUMAR, J.

1. Commissioner of Income Tax being aggrieved from the order of the Income Tax Appellate Tribunal, Delhi Bench, dated 28th August, 2003 has preferred the present appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). It is contended that the following substantial question of law arises for consideration of the Court in the present appeal:-

"A) Whether Income Tax Appellate Tribunal was correct in law in setting aside the order passed by the Assessing Officer U/S 154 of the Income Tax Act?

B) Whether Income Tax Appellate Tribunal was correct in law in holding that the allowability of claim of payments towards Provident Fund (PF), Family Pension (FP), Employee State Insurance (ESI) and administrative charges are debatable issues and cannot be termed as mistake apparent on record?"

2. The assessee had filed his return for the assessment year 1992-93 and assessment was completed vide order dated 20th January, 1994 under Section 143 (3) of the Act at an income of Rs.19,95,900/-. The Assessing Officer issued a notice under Section 154 of the Act stating why the payments of ESI, PF etc. made



on 15th April, 1992 under Section 43B, and payments made in excess of Rs.10,000/- be not added back to income. The claim of the assessee was not accepted. Against this order the assessee preferred an appeal before the commissioner of Income Tax (Appeals), which was also dismissed by the First Appellate Authority vide order dated 10th May, 1996. The matter was initially accepted by the Assessing Officer and subsequently it was held that making these additions would not amount to correction of mistake apparent on face of the record, rather it would be re-determination of controversial and issues which are seriously debatable. A Second appeal was preferred by the assessee before the Income Tax Appellate Tribunal, Delhi Bench, which was partly allowed. The appellate authority accepted the plea of the assessee in relation to payment of PF, EPF and ESI etc., and in relation to the levy of penalty interest under Section 234A of the Act, the matter was remanded and restored to the Commissioner of Income Tax (Appeals) to pass a speaking order. The question of charging of simple interest was decided against the assessee, while relying upon the judgment of the Tribunal itself, in the case of ACIT vs. Kamex Corporation, ITA No. 5221/Delhi/1993. The findings, the correctness of which is really questioned in the present appeal, is only with regard to the payment of PF, EPF, ESI and other administrative charges and their addition/deletion at the relevant time. The



Appellate Tribunal in this regard held as under:-

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"Having considered the rival submissions and from a careful perusal of record. I find force in the contention of the assessee that u/s 154 of the IT Act, the Revenue authorities can make only those rectifications which are error apparent from the record. They cannot adjudicate the issues which are debatable ones and a mistake which is not apparent cannot be rectified. In support of this proposition, we rely upon the following judgments:-

Nirmal Udyog Vs. CIT & Another 232 ITR 493
(MP)

M.V.S. Sastry Vs. CIT 232 ITR 651

CIT Vs. Eurasia Publishing House (P) Ltd.
232 ITR 381

237 ITR 165 (SC)
250 ITR 40 (Dcl)

3. It is also evident from the record that in AY 93-94, prima facie adjustments were made by the AO and the same were deleted by the CIT (A) after holding that the determination of validity of the claim of payment of PF etc. is a debatable issue and no disallowance can be made u/s 43B by doing prima facie adjustment. In these circumstances, it is an admitted position that the allowability of claim of payments towards, PF, EP, ESI and administrative charges are



debatable issues. As such, these claims cannot be disallowed u/s 154 when they are admittedly allowed by the AO while framing a regular assessment u/s 143(3) of the Act. We are, therefore, of the view that the lower authorities are not justified in making the disallowance. Accordingly, the order of the CIT (A) is set aside and the impugned additions are deleted.”

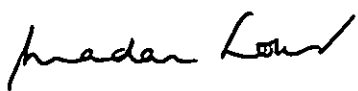
4. The above conclusions of the Appellate Tribunal is based upon the judgments afore-referred and is also relatable to the facts on record. The Tribunal is the final fact-finding authority and its conclusion in that regard can hardly be interfered by this Court within the scope of Section 260-A of the Act. The provisions of Section 154 of the Act clearly indicate that it is only a mistake apparent from the record which can be rectified by the Assessing Officer and accordingly, could amend the order of assessment. Determination of controversial or debatable issues in exercise of this rectification powers would not be permissible. How, when and under what circumstances, the amendment could be made are clearly stated in the provisions and they have amply been clarified by judicial pronouncements. The questions raised by the appellant in the present appeal having been answered by various judgments do not give rise to any question of law or substantial questions of law to be answered by this Court. In



any case, the view taken by the Appellate Tribunal in the facts and circumstances of the present case, does not call for any interference.

5. As no question of law, much less any substantial question of law arises in the present appeal, we dismiss the same without any orders as to costs.


SWATANTER KUMAR
(JUDGE)


MADAN B. LOKUR
(JUDGE)

May 05, 2005
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Certified that the corrected copy of the judgment has been transmitted in the main Server.