



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 04.05.2010

+ **ITA 523/2010**

THE COMMISSIONER OF INCOME TAX ... Appellant

- versus -

CL RAE ... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Rashmi Chopra
For the Respondent : None

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

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| 1. Whether Reporters of local papers may be allowed to see the judgment ? | No |
| 2. To be referred to the Reporter or not ? | No |
| 3. Whether the judgment should be reported in Digest ? | No |

V.K. JAIN, J (ORAL)

1. This is an appeal against the order of the Income Tax Appellate Tribunal, dated 05.06.2009, whereby the miscellaneous application being M.A No. 240/Del./05, filed by the Revenue, seeking rectification of the order of the Tribunal dated 03/08/2001, in ITA No. 1652/Del/1995, was dismissed.

2. The respondent/assessee was an employee of G.E.C. Turbine Generators India Ltd. (GECATGL) working as Assistant in Mechanical



assessee filed the return, declaring income of about Rs. 15,90,942/-. During assessment proceedings, the Assessing Officer noticed that a search under Section 132 of Income Tax Act, hereinafter refer to as “the Act” had been conducted at the business premises of the company in which the assessee was employed. He found that the evidence seized during the search established that the salary paid to the assessee had not been fully and truly disclosed by the employer company. Based upon the material sized during search, the settlement application filed by the employer company and the order of CIT (A) in respect of earlier orders, the Assessing Officer made certain additions to the salary disclosed by the assessee. The additions comprised Rs 76,738/- on account of overtime, Rs 3, 36,809/- on account of overheads being 45% of the salary and Rs. 28,704/- on account of perquisites. He also made addition of Rs. 13,55,167/- on account of tax perquisites.

3. In the appeal filed by the assessee, the CIT(A), relying upon the decision of his predecessor in case of 9 other employees of the same company whose cases were identical to the case of the assessee and also relying upon the order of the Tribunal in the case of 21 employees of the same company, having identical facts, deleted the additions made by the Assessing Officer.

4. Being aggrieved from the order of the CIT(A), the Revenue filed an appeal before the ITAT. The appeal was dismissed vide order dated 03rd August, 2001 on the ground that the CIT(A) had followed the order of his



been upheld by the Tribunal.

5. The Revenue preferred ITA No.177/2002 before this Court against the order of the Tribunal dated 03rd August, 2001, challenging deletion of the additions on account of overtime, overheads and perquisites, as also the deletion of tax perquisites, claiming that the order of the Tribunal was perverse and was a non-speaking order. It was contended before this Court that the facts of the cases, relied upon by the Tribunal, were distinguishable. It was, however, admitted before this Court that no such plea had been raised by the Revenue before the Tribunal. The appeal filed by the Revenue was, therefore, dismissed vide order dated December 15, 2003 holding that the view of the Tribunal on a similar issue having been accepted by the Revenue in respect of the one of the issues, no question of law survived for the consideration of this Court

6. M.A.No. 240/Del/05 was, thereafter, filed by the Revenue stating therein that the assessee himself had disclosed tax perquisite, amounting to Rs 8,36,319/- in the return filed by him and even that amount was deleted by the CIT(A), thereby giving excessive relief to the assessee. The Revenue, accordingly, sought rectification of the mistake alleged to have been committed by the Tribunal, while passing the order dated 03rd August, 2001.

7. While dismissing the application filed by the Revenue, the ITAT noted that during the course of hearing before it, the Departmental Representative had conceded the fact that while allowing the appeal filed by the assessee, the CIT(A) had followed the order of his predecessor in case of



Departmental Representative having conceded that the issue was covered by the order passed in favour of identically placed assessees and the Reference Applications against its order having been rejected, there was no ground for reviewing the order passed by it on 03rd August, 2001.

8. Section 254(2) of the Act, to the extent, it is relevant empowers the Appellate Tribunal to amend an order passed by it, with a view to rectify any mistake apparent from the record. In order to attract the application of Section 254(2), the mistake must not only exist, it needs to be apparent from the record which would mean that the mistake, attributed by the applicant in the order, must be visible and obvious. It needs to be an error which is patent and discovery of which does not require argument or elaboration.

9. In the present case, the Tribunal did not find any apparent error in the order passed by it on 03rd August, 2001. Departmental representative having conceded before the Tribunal that the case of the assessee was identical to that of other employees whose case was followed by the CIT(A) for allowing the appeal filed by the assessee, there was no necessity for the Tribunal to examine the facts of the case of the assessee and compare them with the facts of other employees whose case was relied upon by the CIT(A). It was not the case of the Revenue before the Tribunal that no concession, as recorded in the order dated 03rd August, 2001, was actually made by the Departmental Representative. The Departmental Representative having conceded that the facts of the case of the assessee were identical to the facts of other assessees and the Tribunal having



passed by the Tribunal on 3rd August, 2001.

10. While considering the application of the Revenue under Section 254(2) of the Act, the Tribunal could not have gone into those facts which had already been conceded before it by the Departmental Representative. If the facts of the case of this assessee were different from the facts of the cases of other employees of this company, as is now sought to be contended by the Revenue, the alleged difference in the facts ought to have been brought to the notice of the CIT(A) and in any case to the notice of the Tribunal before it decided the appeal filed by the Revenue. However, not only did the Revenue fail to bring any distinguishing feature to the notice of the Tribunal, its representative virtually conceded that the case of the assessee was identical to the case of the employees relied upon by the CIT(A). In fact, during the course of hearing of ITA No.177/2002, it was fairly conceded by the learned counsel for the Revenue that the plea of difference in facts was not raised by the Revenue before the Tribunal. In these circumstances, it is difficult for us to say that the Tribunal was not correct in holding that there was no error apparent from the record, in the order passed by it on 03rd August, 2001. In any case, no substantial question of law arises for our consideration in this case.

The appeal is hereby dismissed.

(V.K. JAIN)
JUDGE

(BADAR DURREZ AHMED, J)
JUDGE