R-197

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

ITR No. 64 OF 1993

% Date of Decision: 01.09.2010.

COMMISSIONER OF INCOME TAX . . . Appellant

Through : None.

VERSUS

MR. FEDDERS LLOYED CORPN. (P) LTD. . . .Respondent

Through: Ms. Prem Lata Bansal, Advocate

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. *(ORAL)*

1. The following question of law is referred for opinion of this Court:-

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the question whether air-condition or refrigerator was a domestic electrical appliance or not was a controversial question and on this ground the investment allowance granted in the assessment order could not be withdrawn u/s 154 of the I.T. Act, 1961".

2. This reference pertains to the assessment year 1980-81. The assessee company is the manufacturer of air-Conditioners and

Act which was allowed by the Assessing officer in the original assessment. However, later on, the Assessing Officer issued a notice under Section 154 of the Act asking the assessee to show cause as to why the investment allowance already allowed be not withdrawn, and ultimately the Assessing Officer passed the orders withdrawing it. In exercise of its power under Section 154 of the Act, in appeal CIT (A) held that the issue was debatable and hence action under Section 154 of the Act was not warranted. The ITAT has upheld the decision of the CIT (A). We are of the opinion that ITAT rightly held that the issue was debatable. It rightly observed that it was not concerned with the merits of the matter but the question was as to whether such an action could be taken by the Assessing Officer in 154 proceedings. Since the dispute, whether the Air-conditioners and refrigerators were articles falling in the list of Schedule-XI, namely, whether they were domestic or electric appliances or it was a controversial question, rectification proceedings under Section 154 could not be initiated. This is so held by the Supreme Court in ***T.S. Balram, Income Tax Officer, Company Circle IV, Bombay*** *Vs.* ***Volkart Brothers And Others,*** *82 ITR 50* in the following manner:-

> "From what has been said above, it is clear that the question whether Section 17(1) of the Indian Income-tax Act, 1922 was applicable to the case of the first respondent is not free from doubt. Therefore the Income-tax Officer was not justified in thinking that on that question there can be no two opinions. It was not open to the Income-tax Officer to go into the true scope of the relevant provisions of the Act in a proceeding under Section 154 of the Income-tax Act, 1961. A mistake apparent on the record must be an 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. As seen earlier, the High Court of Bombay opined that the original assessments were in

> Court was not justified in going into that question. In Satyanarayan Laxminarayan Hegde and Ors. v. Millikarjun Bhavanappa Tirumale this Court while spelling out the scope of the power of a High Court under Article 226 of the Constitution ruled that an error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions cannot be said to be an error apparent on the face of the record. A decision on a debatable point of law is not a mistake apparent from the record-see Sidhramappa v. Commissioner of Income-tax, Bombay. The power of the officers mentioned in Section 154 of the Income-tax Act, 1961 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''. In this case it is not necessary for us to spell out the distinction between the expressions "error apparent on the face of the record" and "mistake apparent from the record". But suffice it to say that the Income-tax Officer was wholly wrong in holding that there was a mistake apparent from the record of the assessments of the first respondent."

3. We, thus, answer the question in favour of the assessee and against the revenue.

(A.K. SIKRI)
JUDGE

(REVA KHETRAPAL)
JUDGE

SEPTEMBER 1, 2010
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