

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2010

CORAM

THE HONOURABLE MR.JUSTICE D.MURUGESAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.704 of 2004

The Commissioner of Income Tax
Tamil Nadu-IV, Madras .. Appellant

-vs-

Shri Panchu Arunachalam
11. Bagirathi Ammal Street
T.Nagar, Chennai 600 017 .. Respondent

Memorandum of Grounds of Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench dated 23.04.2001 made in M.P.No.51/Mds/2000 arising out of M.P.No.18/Mds/97 in ITA No.1680/Mds/90 for the assessment year 1982-83.

For Appellant :: Mr.K.Subramaniam

For Respondent :: No appearance

JUDGMENT

(Judgment of the Court was delivered by D.MURUGESAN, J).

This tax case appeal, at the instance of the revenue, was admitted on the following substantial question of law:-

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law and fact in deletion of the penalty levied under Section 271(1)(c) of the Act?"

The following additional questions of law have also been raised later and having regard to the importance of the said additional questions of law, they are also taken on file for a decision.

"(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in cancelling the penalty under section 271(1)(c) on the basis of a Miscellaneous Petition for rectification when the Tribunal has rejected a similar petition by order dated

21.8.2000, thus exceeding the jurisdiction u/s 254(2) of the Act which does not empower the Income Tax Appellate Tribunal to review its appellate order?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the penalty levied under section 271(1)(c), in an order passed on the second Miscellaneous Petition filed by the assessee which involved debatable questions of fact and reappraisal of the evidence?

(3) Whether on the facts and in the circumstances of the case, the order of the Income Tax Appellate Tribunal cancelling the penalty dated 23.4.2001 on the second Miscellaneous Petition purporting to rectify the original appellate order dated 27.10.1996 is valid being barred by the period of limitation prescribed u/s 254(2) of the Income Tax Act?"

2. The core question to be decided in this appeal is as to whether in exercise of the provisions of Section 254(2) of the Income Tax Act, 1961, the appellate Tribunal would be entitled to entertain an application seeking for rectification of its order for the second time, when a similar application was rejected earlier?

3. The respondent is the proprietor of M/s Panchu Arts and he is assessed to income tax. While completing the assessment for the assessment year 1982-83 in respect of the assessee's production of a Tamil picture titled 'Ananda Ragam', the assessing officer opined that the assessee concealed with the particulars of income and furnished inaccurate particulars of income, particularly the non-disclosure of Rs.3,00,000/- received as royalty resulting in reduction/evasion of tax. Hence a show cause notice read with Section 271(1)(c) of the Act was issued to the assessee. After considering the objections and after giving sufficient opportunity, the assessing officer quantified the penalty in a sum of Rs.2,21,320/-. That order was carried on to the Commissioner of Income Tax (Appeals) by the assessee and the levy of penalty was confirmed. As against the said order, an appeal was filed before the Tribunal and the same was also dismissed on 27.10.96. On the ground that a mistake apparent on the face of record had crept in, the assessee preferred a Miscellaneous Petition No.18/Mds/97. The Tribunal, by order dated 21.8.2000, dismissed the said application with the following observation:

"We have considered the rival submissions and perused the records. In so far as it relates to the payment of royalty, this Tribunal has considered whether it is voluntary or involuntary taking note of all the facts available on record and on the submissions made. This being the finding of fact, we are not in a position to accept the assessee's case that there was an error apparent from the record in their proceedings for the rectification. This Tribunal cannot sit over in appeal on its decision which was passed after considering relevant facts and submissions. We, therefore, do not find any merit in the stand taken by the assessee."

4. It appears that thereafter the assessee filed another Miscellaneous Petition No.51/Mds/2000 pointing out certain factual discrepancies that had crept in while the main appeal was disposed of by the Tribunal on 27.10.96. That application came to be allowed by the order dated 24.3.2001, which is questioned in this appeal by the revenue.

5. We have heard Mr.K.Subramaniam, learned counsel appearing for the revenue. Though notice was served on the respondent as early as on 12.10.2004 and the name is shown in the cause list, none appears.

6. As already mentioned, the issue is whether the Tribunal is right in entertaining the second application for rectification of its order in the main appeal. To decide the same, the provisions of Section 254(2) of the Act can be usefully extracted below:-

"254.(1)....

(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:

Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this sub-section unless the Appellate Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard:

Provided further that any application filed by the assessee in this sub-section on or after the 1st day of October, 1998, shall be accompanied by a fee of fifty rupees."

7. By that provision, the appellate Tribunal is empowered to entertain an application for rectification on the ground that any mistake apparent from the record had occurred. The condition being that such application should be filed within a period of four years from the date of the order. On entertaining such application, the Tribunal should also pass orders amending any orders that have been passed in the appeal. But such order shall be passed only after notice to the parties in terms of the proviso. The provision of Section 254(2) is intended for the parties to approach the appellate Tribunal only on the ground of any mistake apparent from the record had occurred in the original order. Factually, in this case, the assessee had filed such an application seeking for rectification on the ground that a mistake apparent from the record had occurred in the original order of the Tribunal and that application was rejected on its own merits. In view of the same, the order in the application merges with the order of the Tribunal passed in the main appeal.

8. When once the power for rectification of the earlier order is invoked/exercised and an order is passed and such order merges with the earlier order of the Tribunal, in our opinion, on the ground that a mistake apparent from the record had occurred, another application for rectification of the original order passed in the appeal may not lie. We are inclined to take the above view keeping in mind that whatever power conferred on the authorities must be exercised and orders passed thereon should have a finality attached to it, as otherwise the parties aggrieved by such orders would be entitled to file any number of such applications seeking for rectification and the same would amount to reviewing of the earlier order, which power does not vest in the Tribunal under Section 254 of the Act. Once an application seeking for rectification is disposed of, be it the revenue or the assessee, if aggrieved, should have the recourse to the provisions of appeal before this Court and either of them cannot invoke the provisions of Section 254(2) by filing another

application for rectification which, in our view, cannot be entertained under that section. We may also observe that on the facts of this case, by the subsequent order of rectification, the original order of the Tribunal itself is sought to be rectified, which resulted in the deletion of the penalty levied under Section 271(1)(c) of the Act.

9. For all the above reasons, the tax case appeal is allowed particularly on the second additional substantial question of law in favour of the revenue, and in view of the said finding, the other substantial questions of law are also answered in favour of the revenue, but against the assessee. No costs.