IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2673 OF 2001

IPCA Laboratories Ltd. .. Petitioner

v/s.

Shri. Rajaram Deputy Commissioner of
Income Tax & Anr. .. Respondents

Mr. F.V. Irani a/w Atul Jasani for the petitioner
Mr. Ashok Kotangle i/b Ms. Padma Divakar for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 28th JULY, 2016.

P.C.

1. This petition under Article 226 of the Constitution of India assails the Notice dated 26th September, 2001 issued by the Assessing Officer under Section 154 of the Income Tax Act, 1961 (the Act). The impugned notice dated 26th September, 2001 seeks to rectify an order dated 5th October, 1998 passed under Section 154 of the Act relating to A.Y. 1992-93. The basis of the impugned notice is the decision of this Court in the petitioner's own case in Income Tax Appeal No.131 of 2001 dated 2nd July, 2001 holding that the benefit of Section 80HHC of the Act is not available to the petitioner for the Assessment Year 1996-97.

2. This petition was admitted on 27th November, 2001 and the respondent Revenue were restrained from proceeding further with the

impugned Notice dated 26th September, 2001.

3. The brief relevant facts are as under :-

(a) On 30th December, 1992, the petitioner filed its Return of Income for the A.Y. 1992-93. In its return, the petitioner inter alia claimed deduction of Rs.1.46 crores under Section 80HHC of the Act. On 31st March, 1995, the assessment for A.Y. 1992-93 was completed by the Assessing Officer under Section 143(3) of the Act *inter alia* restricting the claim for deduction under Section 80HHC of the Act to Rs.1.19 crores.

(b) Being aggrieved at the partial denial of the benefit of deduction under Section 80HHC of the Act, the petitioner preferred an appeal to the Commissioner of Income Tax (Appeal) [(CIT(A)]. By an order dated 5th October, 1995, CIT(A) allowed the petitioner's appeal by directing the Assessing Officer to increase the petitioner's entitlement for deduction under Section 80HHC of the Act. Consequent to the above order dated 5th October, 1995 by the CIT(A), effect was given to it by the Assessing Officer on 5th January, 1996 passing an order resulting *inter alia* in enhancement of deduction under Section 80HHC of the Act to Rs.1.46 crores as claimed. These orders were accepted by both the Revenue and the petitioner.

(c) Thereafter, the rectification of the order dated 5th January, 1996 (giving effect to order) made by the petitioner for deduction under Section 43B of the Act were allowed by orders dated 6th March, 1996 and 8th August, 1996. On 23rd August, 1996 the Assessing Officer passed an order rectifying an order dated 6th

March, 1996 giving credit for an amount of Rs.14.72 lakhs to be adjusted in the Assessment Year 1992-93. At the hearing, the petitioner tendered a copy of the order dated 23rd August, 1996 passed under Section 154 of the Act. This as the communication dated 23rd August, 1996 annexed a Exhibit-P to the petition was not the order dated 23rd August, 1996 passed under Section 154 of the Act. This the petitioner pointed out was a mistake and apologized for annexing the incorrect document. The copy of order dated 23rd August, 1996 is taken on record and marked "X".

(d) On 5th October, 1998, the Assessing Officer consequent to the petitioner pointing out non-granting of interest under Section 244A of the Act, rectified its order dated 23rd August, 1996 under Section 154 of the Act. Thus determining the interest payable under Section 244A of the Act. The order dated 5th October, 1998 reads as under :-

"In this case order u/s 154 was passed on 06.03.1996 determining Taxable Income at Rs.2,16,62,966/- resulting in refund of Rs.33,33,237/- after giving credit for Rs.46,45,943/- being the total refundable amount adjusted against the demand of the said assessment year.

The assessment was further rectified u/s 154 on 23.08.96 to give credit for on amount of Rs.14,72,940/- which was adjusted against the said assessment year.

The assessee's representative has pointed out that interest u/s 244A was not granted while determining the amount refundable to the assessee. After verification the assessees contention was found to be correct. Hence the mistake being apparent from record is duly rectified u/s 154 of the I.T. Act.

The amount of interest u/s. 244A(1)(b) to be granted to the assessee is worked out as under :-

1	*On an amount of Rs.32,78,175/- for the period from 18.10.1995 to 06.08.1996 after adjusting interest u/s 234A, B, C & Int. u/s 220(2) and RO already issued of Rs.12,418/- u/s 143(1)(a)(32,78,175 x 10M x 1%)*	*:*	*3,27,810*
2	*On an amount of Rs.14,72,940/- for the period from 22.11.1995 to 09.10.1996 14,72,940 x 11M 1%*	*:*	*1,62,019*
			4,89,829

Total income remains unchanged at Rs.2,16,62,966/- given credit for prepaid taxes and tax paid / adjusted after regular assessment. Allow Interest u/s 244A(1)(b) of Rs.4,89,829/- as discussed above and issue refund order accordingly.

Sd/-
(Avinash Mishra)
Asst. Commissioner of Income-Tax
Central Circle – 13, Bombay"

(e) On 2nd July, 2001, this Court disposed of the petitioner's appeal being Income Tax Appeal No. 131 of 2001 from the order of the Income Tax Appellate Tribunal for A.Y. 1996-97. In its above order dated 2nd July, 2001, it held that the petitioner was not entitled to deduction under Section 80HHC of the Act for A.Y. 1996-97. Being aggrieved by the order dated 2nd July, 2001 of this Court, the petitioner carried the issue in appeal to the Supreme Court, being SLP (C) No. 16293 of 2000. The Supreme Court after hearing the petitioner directed its Registry to issue notice to the respondent Revenue on the petitioner's above petition.

(f) It is consequent to the order of this Court dated 2nd July, 2001 in relation to A.Y. 1996-97 that the Assessing Officer on 26th September, 2001 issued the impugned notice. By the impugned notice, it sought to rectify a mistake in the order dated 5th October, 1998 passed under Section 154 of the Act. The basis of the impugned Notice is the decision of this Court in respondent's assessee's own case for A.Y. 1996-97 holding that the petitioner is not entitled to the benefit of Section 80HHC of the Act. The impugned notice dated 5th October, 1998 reads as under :-

"The order under Section ____ for the assessment year 1992-93 made on __ It is proposed to rectify in view of jurisdictional High Courts decision on the issue of 80HHC deduction in your own case for A.Y. 1996-97. In this regard the last order passed for this assessment year is order u/s 154 dated 5.10.1998 in your case (IT/WT/GT) requires to be amended as there is a mistake apparent from the record within the meaning of Section 154/155 of the Income Tax Act, 1961/35 of Wealth-Tax Act, 1957/34 of Gift Tax Act, 1958. The rectification of the mistake as per details given below will have the effect of enhancing the assessment / reducing the refund / increasing your liability and, therefore, if you wish to be heard in this connection you are requested to appear in person or by an authorised representative in my office at Mumbai on 8.10.2001 at 11.00 a.m. if, however, you intend sending a written reply to this notice and do not wish to be heard in person, you are requested to ensure that your reply reaches me on or before the date mentioned above."

(g) The impugned notice was challenged in this Court as being without jurisdiction and as pointed out above, admitted on 27th November, 2001.

4. Mr. Irani, learned Counsel appearing in support of the petition submits that the impugned Notice dated 26th September, 2001 is without jurisdiction submits as under :-

(a) The impugned Notice is barred by limitation as the issue of Section 80HHC of the Act was a subject of consideration in the order of Assessment dated 31st March, 1995. It was not a subject matter of consideration of the order dated 5th October, 1998 passed under Section 154 of the Act which the impugned notice seeks to rectify. Thus, the impugned notice having been issued beyond a period of four years from the order dated 31st March, 1995 which dealt with the issue of Section 80HHC of the Act, is without jurisdiction.

(b) The issue of deduction under Section 80HHC of the Act was a subject of consideration in the order of Assessment dated 31st March,1995. This order dated 31st March, 1995 was appealed to CIT(A) on the issue of the benefit of Section 80HHC of the Act. The appeal was allowed by order dated 5th October, 1995 by the CIT(A). Therefore, the impugned notice is without jurisdiction being hit by sub-Section 1(A) of Section 154 of the Act; and

(c) The issue sought to be rectified by the impugned notice viz. availability of the benefit of Section 80HHC of the Act is a debatable issue. This is evident from the fact that the very basis of the application viz. the order of this Court dated 2nd July, 2001 in Income Tax Appeal No.131 of 2001 for A.Y. 1996-97 when appealed to the Apex Court was not dismissed but an issue of notice to the Revenue was directed before admission.

5. As against the above, Mr. Kontangle, learned Counsel for the Revenue supports the impugned notice and submits as under :-

(a) Issue of Section 80HHC of the Act has been decided against the petitioner by this Court in Income Tax Appeal No. 131 of 2001 for A.Y. 1996-97. Thus, the entire exercise in issuing the impugned notice is only with an intent to set right the mistake / error in granting the petitioner the benefit of Section 80HHC of the Act for A.Y. 1992-93. Thus, the notice is not without jurisdiction; and

(b) The impugned notice is not barred by limitation. This is so as even if the order dated 5th October, 1998 did not deal with Section 80HHC of the Act, it modifies the Assessment Order dated 31st March, 1995. Therefore, Assessment Order stood rectified on 5th October, 1998 and the original order stood merged in it i.e. the order dated 5th October, 1998. Therefore, the impugned notice is within four years from 5th October, 1998 and is within jurisdiction. In support, reliance is placed upon the decision of the Apex Court in ***Hind Wires Ltd. Vs. Commissioner of Income Tax, 212 ITR 639.***

6. It is a settled position in law that the power under Section 154 of the Act can be exercised to amend any order passed by an Authority under the Act, upon satisfaction of the following conditions :-

(a) Mistake must be in the order;

(b) Mistake must be apparent from the record i.e. it must not be an issue on which two views are possible and the mistake need not be apparent from the order itself but could also be evident from the materials i.e. the record upon which the order sought to be rectified is based;

(c) Only that portion of the order can be rectified, which has not merged into an order of the Appellate authority;

(d) The order on rectification should be made within 4 years from the end of the financial year in which the order sought to be rectified is passed; and

(e) An amendment under Section 154 of the Act could be made not only at the instance of the Authority itself but also at the instance of the Assessee.

7. The Revenue's contention that the entire exercise of issuing the impugned notice is to set right a mistake in granting the benefit of Section 80HHC of the Act to the petitioner is well intentioned. This realisation of mistake / error was on account of this Court's order dated 2nd July, 2001 in Income Tax Appeal No. 131 of 2001 for A.Y. 1996-97. However, the jurisdiction to issue a notice for rectification can only arise if the jurisdictional requirements of Section 154 of the Act are satisfied. A rectification cannot be sustained merely on the basis of noble intent.

8. No submissions were made by the Revenue to contest the submissions (b) and (c) above made by the petitioner i.e. issue sought to be rectified has merged into the order of the Appellate Authority and also that the issue is debatable. Therefore, before addressing the first issue of limitation, we shall consider the other two issues raised by the petitioner.

9. In the present facts, we find that the issue of Section 80HHC of the Act was a subject matter for consideration by the Assessing Officer while passing an order dated 31st March, 1995 relating to A.Y. 1992-93. Thereafter, in an appeal filed by the petitioner, the CIT(A) in its order

dated 5th October, 1995 also dealt with the issue of Section 80HHC of the Act while allowing the appeal for A.Y. 1992-93 of the petitioner. The order of the CIT(A) has been accepted by the Revenue in respect of the A.Y. 1992-93, as no further appeal from the order of CIT(A) was filed. Thus, the issue of grant of deduction under Section 80HHC of the Act stands settled by the Appellate Authority into which the order of the assessment dated 31st March, 1995 has merged. Therefore, even if we assume that impugned notice is not barred by limitation, yet such a notice would be barred by virtue of Section 154(1A) of the Act. It is not open to the Authority under the Act to rectify an order on an issue of Section 80HHC of the Act which has undisputedly merged with the order of the Appellate Authority. Thus, on the aforesaid ground itself, the impugned notice is without jurisdiction.

10. Moreover, we also note that the basis of the impugned notice dated 26th September, 2001 is non availability of deduction under Section 80HHC of the Act to the petitioner is the decision of this Court dated 2nd July, 2001 in Income Tax Appeal No. 131 of 2001 for A.Y. 1996-97. However, it is an undisputed position before us that the above order of this Court dated 2nd July, 2001 was carried to the Supreme Court being C.A. No.16293 of 2001. The Apex Court on hearing the petitioner, directed the Registry to issue notice to the respondent Revenue before the petition could be considered for admission. This indicates that the issue of benefit of Section 80HHC of the Act was debatable one and, therefore, could not be a subject matter of rectification proceedings. Any issue that requires debate and is not self evident as it requires examination and consideration, would be beyond the scope of rectification. Thus, on the above ground also the impugned

notice is without jurisdiction.

11. Therefore, in the view we have taken on submission (b) and (c) made by the petitioner as deliberated in paragraphs 9 and 10 hereinabove, the issue raised in submission (a) by the petitioner of the impugned notice being time barred need not be examined in the present facts. The impugned notice dated 26th September, 2001 is without jurisdiction and not sustainable in law.

12. In the above view, **petition** is **allowed**. Rule made absolute. No order as to costs.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**