

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Nos.1247 of 2009

Shri M.Asokan
123, Selbourne Road,
Ootacamund

...Appellant

-vs-

The Deputy Commissioner of Income Tax,
Circle I (1)
Ooty

...Respondent

Tax Case Appeal under Section 260-A of the Income Tax Act, 1961, is directed against the order passed by the Income Tax Appellate Tribunal, Madras "D" Bench, Chennai in I.T.A No.217/Mds/2006, dated 10.12.2008 for the assessment years 1996-97. and against o/o.Income Tax Appellate Tribunal, Chennai 'D'Bench, Chennai and made in I.T.A.No.217/MDS/2006 in it accessment year 1996-97 and dated 10.12.2008 and against in o/o Commissioner of Income Tax (Appeals)-I, Coimbatore made in Appeal NO.853/01-02 dated 14.11.2005 in Assessment year 1996-97.

For appellant : Mr.M.P.Senthil Kumar

For Respondent : Mr.K.G.Usha Rani
Standing Counsel

JUDGEMENT

[Judgement of the Court was made by T.S.Sivagnanam, J.]

This Tax Case Appeals by the assessee, filed under Section 260-A of the Income Tax Act, 1961, ('the Act' for brevity) is directed against the order passed by the Income Tax Appellate Tribunal, Madras "D" Bench, Chennai in I.T.A No.217/Mds/2006, dated 10.12.2008 for the assessment years 1996-97.

2.The above Tax Case Appeal has been filed raising the following substantial questions of law:-

"(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the Assessing Officer had jurisdiction to rectify u/s.154, the Assessment order allowing exemption u/s.54F of Income Tax Act, 1961?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the Assessing Officer had jurisdiction to rectify an order, where debatable issue and issues where two views are possible can be rectified u/s. 14 of Income Tax Act, 1961?

(iii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not holding that the appellant is entitled to claim exemption u/s.54, on transfer of the adjacent properties, being land appurtenant to the building, on th ground that the mode of acquisition of the properties were different and sold to different persons?

(iv) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not holding that the Assessing Officer is duty bound to assist the appellate in making a claim and allowing the same as exempt u/s. 54 on the whole property, even though the appellant had made claims under section 54 and 54F, instead of rejecting the same merely on technical ground?

(v) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the appellant is not entitled to exemption u/s.54 of Income Tax Act, 1961?

(vi) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the part performance had not taken place within the meaning of section 2(47)(v) of Income Tax Act, 1961, in respect of the house property as on the date of transfer of vacant land?

(vii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate

Tribunal was right in law in not holding that the appellant, who was a co-owner of a house property as on the date of transfer of vacant land is entitled to exemption u/s.54F of Income Tax Act, 1961 on the purchase of a house property exclusively in his name?"

3. We have heard Mr.M.P.Senthil Kumar, learned counsel for the appellant and Mrs.K.G.Usha Rani, learned Standing Counsel for the respondent.

4. The assessment for the year under consideration (1995-96) was completed by the Assessing Officer under Section 143(3) by order dated 29.01.1998. The Assessing Office while doing so took note of the the return of income filed by the assessee and the revised return dated 31.03.1997. In the revised return, the assessee has mentioned a total sale consideration for Selbourn Home as Rs.40 lakhs instead of Rs.35 lakhs in the original return of which the assessee's share is 50 per cent. The said return was processed under Section 143(1) of the Act. Subsequently, notice under Section 143(2) was issued and the assessee's case was taken up for scrutiny in pursuance to which the assessee's authorised representative appeared and discussed the matter and the assessment was completed. Further notice was issued to the assessee by the Assessing Officer invoking his power under Section 154 of the Act, stating that there is an error in the assessment order which is required to be rectified. According to the Assessing Officer, the assessee claimed the entire capital gain arising from the sale of the two properties as exempt under Section 54 and Section 54F of the Act in the return filed by him, since he had purchased property at Coimbatore on 03.04.1996.

5. It was stated that the assessee claimed exemption under Section 54F as long term capital gain arising out of the sale of the property namely house property along with land is incorrect in view of the proviso to Section 54F(1), since on the date of transfer namely, 21.03.1996, the assessee owned house property called as Selbourne Home, which was transferred only on 29.03.1996 and the rental income from which has been assessed under the head "income from house property" for the assessment year.

6. The assessee responded to the notice issued under Section 154 of the Act and contended that both the properties sold are one property being building and land appurtenant thereto but sold to two different purchasers and he also submitted that the capital gain arising as per the transactions are exempt under Section 54 and the claim under Section 54F for the property namely the land measuring 1.83 acres is a mistake. In the statement filed along with the return this submission

made by the assessee was not accepted by the assessing Officer and accordingly, the order was passed on 27.06.2000 rectifying the assessment.

7. The assessee preferred appeal before the Appellate Authority who proceeded to consider the matter on merits, though the assessee took a stand that there are debatable issues, power under section 154 of the Act cannot be invoked. The assessee carried the matter by way of appeal to the Tribunal wherein a specific plea was raised that the order passed by the Assessing Officer under Section 154 is akin to an order passed under Section 143(3) read with Section 147 of the Act and there is no mistake apparent on the face of the original order and Section 154 could not have been invoked. The Tribunal did not consider this contention advanced by the assessee but proceeded to take note of the merits of the matter and dismissed the appeal.

8. In our considered view, the first issue that should have been taken into consideration is as to whether the power under Section 154 of the Act could have been invoked. Admittedly, the power under Section 154 is a power to rectify the mistake and it is not a power to review an order. Furthermore, the power can be invoked to rectify a mistake, which is apparent from the record which undoubtedly would mean that such power cannot be exercised by making roving enquiry into the matter specially where there are disputes raised by the assessee on which a decision requires to be given after considering the submissions.

9. In Commissioner of Income Tax Vs. South Indian Bank Ltd. reported in [(2000) 241 ITR 374 (Ker)] the majority opinion was in favour of the assessee with regard to debatable issues. In the said case, the assessee was paid interest by the bank on the broken period. The assessee purchased Government Securities-cum-interest, which deduction was originally allowed by the Assessing Officer and was later on withdrawn by invoking Section 154 of the Act. It was held to be unjustified as there was no mistake apparent from the record in allowing the deduction. The Revenue preferred appeal against the said appeal before the Hon'ble Supreme Court.

10. The Hon'ble Supreme Court in Commissioner of Income Tax Vs. South Indian Bank Ltd. reported in [(2001) 249 ITR 304 (SC)] considered the case where the assessee, who was a scheduled bank during the assessment year under question deducted interest paid for broken period and this was originally allowed by the Assessing Officer. Later the Assessing Officer invoking the provisions of Section 154 of the Act cancelled such allowance for the reason that the income by way of interest from purchase and sale of securities should be computed under the

head 'interest on securities' and the provisions of Section 18 to 20 did not permit such deduction.

11. The matter went to the Tribunal and the Tribunal held that a debatable issue was involved that the assessing authority was therefore not justified in invoking the machinery for rectification under Section 154. The Hon'ble Apex Court noted that there was a difference of opinion among the learned Judges of the High Court on the principal question and held that there was a debatable question and cannot be rectified under Section 154 of the Act.

12. The learned counsel appearing for the revenue placed reliance on the decision of the Division Bench of this Court in the case of Commissioner of Income Tax Vs. Peirce Leslie & Co.Ltd. reported in [(1998) 99 Taxman 471 (Mad)]. In the said case the dispute was with regard to as to how the market value of the property should be computed, whether the fair market value has to be accepted or the written down value (WDV) in the background of the said fact. The Assessing Officer sought to rectify the order by invoking the power under Section 154 of the Act by taking the WDV as the cost of acquisition. The assessee resisted the plea stating that it is a debatable issue. The Division Bench noted that the issue is well settled by several decisions and therefore cannot be treated as a debatable issue. In our view, the decision in Peirce Leslie & Company Ltd. (supra) cannot render any assistance to the case of the Revenue.

13. For all the above reasons, we hold that the Tribunal committed an error in dismissing the appeal filed by the assessee and in the result the appeal is allowed and the substantial question of law are answered in favour of the assessee. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ska/mp

To

1. The Income Tax Appellate Tribunal,
D Bench, Chennai.
2. The Commissioner of Income Tax,
(Appeals)-I, Coimbatore.

3. The Assistant Commissioner of Income Tax,
Circle - I(1), Ooty.

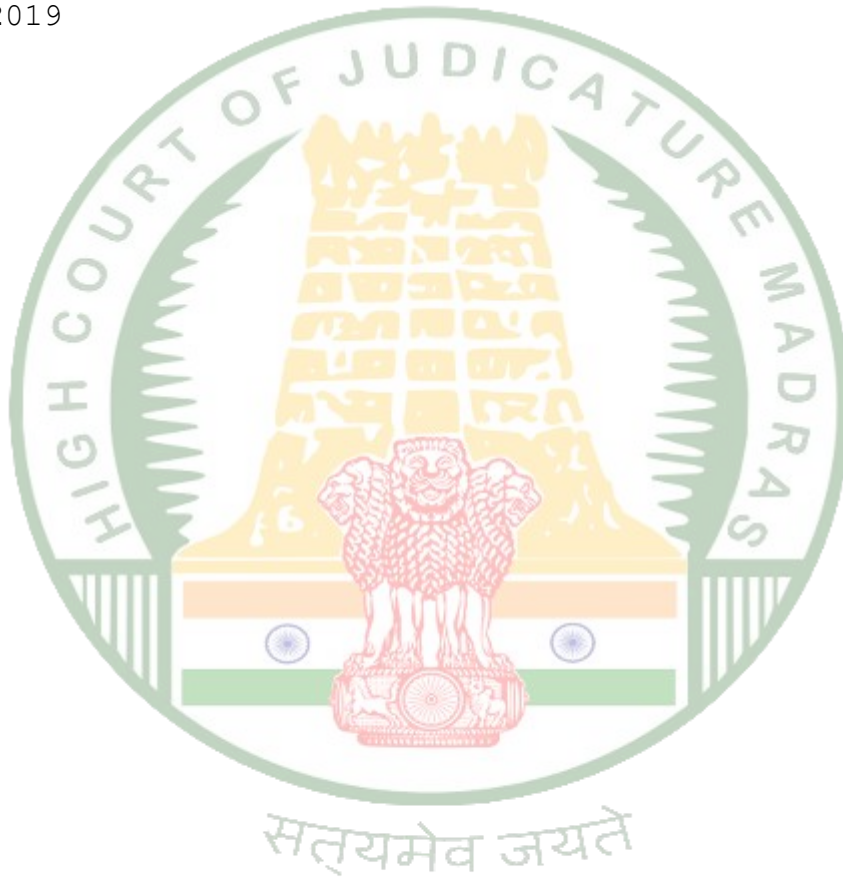
4. The Deputy Commissioner of Income Tax,
Circle - I(1), Ooty.

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.55852

+1cc to Mr.M.P.Senthil Kumar, Advocate, S.R.No.55756

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RR(CO)
CS/30/09/2019



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