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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.06.2021

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.20049 of 2018

and

W.M.P.No.23513 of 2018

M/s.The Cuddalore District Central Co-operative Bank Ltd.,
Represented by its General Manager,
Mr.S.Janagiraman,
No.1, Beach Road,
Cuddalore - 607 001. ...Petitioner

Vs

The Deputy Commissioner of Income Tax,
O/o.The Deputy Commissioner of Income Tax,
Cuddalore Circle,
Soorappa Naicken Chavadi,
Cuddalore - 607 002. ... Respondent

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, to call for the records pertaining to the impugned notice in AAAAT7716R/2011-12 dated 25.06.2018 issued by the respondent and quash the same as the mistakes proposed to be rectified does not fall within the ambit of the term "mistake apparent from the record".

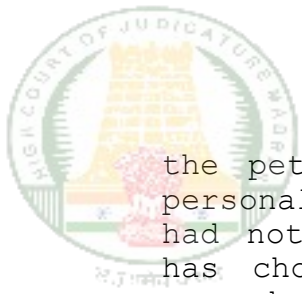
For Petitioner : Mr.K.Ravi

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel
for Income Tax

O R D E R

The Notice issued under Section 154 of the Income Tax Act, 1961 is under challenge in the writ on hand.

2. The impugned notice reveals that the Assessment Order under Section 143 (3) r/w Section 147 of the Income Tax Act, dated 27.02.2015 for the Assessment Year 2011 - 12 requires to be amended, as there is a mistake apparent from the record within the meaning of Section 154 of Income Tax Act, 1961. Thus the Authority Competent, in order to provide an opportunity to



the petitioner, issued a notice fixing the date and time for personal hearing i.e., 09.07.2018 at 11.00 AM. The petitioner had not chosen to appear in person before the respondent, but has chosen to file the present writ petition mainly on the ground that the case of the petitioner is not falling within the scope of Section 154 of Income Tax Act and thus the respondent has no jurisdiction to issue notice and consequently, the impugned notice is liable to be set aside. However, the fact remains that the writ petitioner filed a reply to the notice in writing on 09.07.2018.

3. The learned counsel appearing on behalf of the petitioner strenuously contended that the case on hand is a classic case, where there is an error apparent on exercise of jurisdiction by the respondent under Section 154 of the Income Tax Act. Further the respondent has not considered the facts and circumstances as well as the points raised in the reply by the petitioner for initiation of Rectification Proceedings under Section 154 of the Income Tax Act. The entire exercise is done beyond the scope of the provision under Section 154 of the Act and thus the impugned order is unsustainable.

4. The learned counsel for the petitioner solicited the attention of this Court with reference to the notice issued under Section 142 (1) of the Income Tax Act on 27.01.2015 of the annexure to the said order states that specific reply is given to the each of the queries and furnish details. Item 19 and 20 reveals that as per Provisional Statement of Total Income, it is noticed that the petitioner has claimed deductions in respect of provision for bad and doubtful debts under Section 36 (1) (viia). Item 20 states that the nature and basis for claiming exemption of Rs.13,03,558.90 as "TN Govt.Waiver u/s.36 (1) (viia) and further it states that explain whether this outstanding amount belongs to any rural branch. If so, which branch?

5. It is contended that the assessee clarified all these queries and substantially submitted materials to prove their claims in the order passed under Section 143 (3) read with Section 147 of Income Tax Act, dated 27.02.2015. The assessee claimed deductions in their return of income under Section 36 (1) (viia). In the said order, the Authorities considered all these facts and finally accepted the return of assessed income and thereafter the petitioner filed a petition under Section 154 of the Income tax Act, 1961 on 12.03.2015. Even in that petition, all these factors were brought to the notice of the Income Tax Authorities. The Authorities in proceedings dated 25.08.2015, carefully considered the assessee's petition with regard to the assessee's claim in respect of reserve created for overdue interest added to the total income returned. The



petitioner further contends that in order dated 30.03.2017, the Principal Commissioner of Income Tax, Puducherry, made a representation of assessment under Section 264 of the Income Tax Act and the operative portion of the order reads as under:

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"5. The assessee's above submissions have been carefully considered and both the issues are remitted back to the file of the Assessing Officer for the purpose of examinations of the assessee's claims with reference to the books of account / records maintained by the assessee. The Assessing Officer has to pass a speaking order after considering the issues on merits. Therefore, the order under Section 143(3) read with Section 147 dated 27.02.2015 is set aside for the limited purpose to consider the above two issues only."

6. Regarding the Tamil Nadu Government Waiver account also the authorities categorically considered all the circumstances and even in proceedings dated 30.03.2017, the assessee had claimed Rs.7,79,641/- as Tamil Nadu Government Waiver amount as eligible deduction as per Section 36 (1) (viii). Finally in the order dated 21.12.2017 passed under Section 143 (3) read with Section 264 of Income Tax Act, 1961, the Authorities have considered all these aspects elaborately and passed orders on merits and, therefore, the very initiation of proceedings under Section 144 for rectification of mistake is beyond the scope and now the respondent is making an attempt to adjudicate a disputable point, which is impermissible in view of the decisions of the various Courts in this regard.

7. The learned counsel of the petitioner relied on the judgment of the Hon'ble Supreme Court of India, in the case of T.S.Balaram, Income Tax Officer vs. Volkart Brothers reported in [1971] 82 ITR 50 (SC), wherein Apex Court held as follows:

"It is a matter for consideration whether the definition contained in S. 2(31) of the Income-tax Act, 1961, is an amendment of the law or is merely declaratory of the law that was in force, earlier. To pronounce upon this question, it may be necessary to examine various provisions in the Act as well as its scheme.

Section 113 of the Income-tax Act, 1961 corresponded to S. 17(1) of the Indian Income-tax Act, 1922, but that section has now been omitted with effect from April 1, 1965 as a result of the Finance Act, 1965.

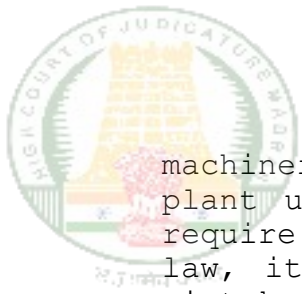
From what has been said above, it is clear that the



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question whether S. 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 S. 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 accordance with law though in our opinion the High Court was not justified in going into that question. In *Satyanarayan Laxminarayan Hegde and ors. v. Millikarjun Bhavanappa Tirumale*(1) this Court while Spelling out the scope of the power of a High Court under Art. 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 AndannappaManvi v. Commissioner- of Income-tax, Bombay* (2). The power of the officers mentioned in S. 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."

8. In the case of *Harbans Lal Malhotra & Sons (P) Ltd vs. Income Tax Officer* reported in [1972] 83 ITR 848 (Calcutta), the High Court of Calcutta held that "ITO issued notice under section 154/155 proposing rectification of assessment order wherein assessee was wrongly allowed depreciation of 10 percent instead of 7 percent on machinery used for production of safety razor blades could be said to be part of 'Iron & Steel Industry' and could come within category (b) of item III (ii) in Part I of Appendix I of Income-tax Rules, 1962 which was a question which required, firstly an interpretation of expression 'other



machinery and plant' and, secondly, nature of machinery and plant used by assessee - Held, yes - whether since that would require investigation both of facts as well as interpretation of law, it could not be said that it was an obvious and apparent mistake which was self-evident and did not require either a process of argument or investigation - Held, yes - whether, therefore, proceedings taken under Section 154 were without jurisdiction and further proceedings pursuant to impugned notice had to be quashed ."

9. In yet an another judgment in the case of Coates of India ltd., vs Deputy Commissioner of Income Tax reported in [1995] 214 ITR 498 (Cal), the Calcutta High Court held that "different courts have held that both under Section 143 (1) (a) and Section 154, the Assessing Officer has power to act only when there is no dispute as to fact and law. The very matter which was sought to be rectified under Section 154 was pending decision before the Commissioner (Appeals). There was thus a "live" dispute on the subject-matter of Section 154, a dispute which could not be dismissed out of hand. Apart from no notice under Section 154 being permissible in the circumstances of the case, the Assessing Officer himself could not have decided any debatable issue under Section 143 (1) (a). By the impugned notice under Section 154, the Deputy Commissioner was seeking to correct the intimation under Section 143 (1) (a) by introducing a matter which he could not have decided under Section 143 (1) (a)."

10. Citing all these judgments, the learned counsel for the petitioner reiterated that a case on hand is not a case of mistake apparent on record and it is a case of disputable issue which is sought to be adjudicated by the respondent and, therefore, the impugned notice is beyond the scope of Section 154 of the Income Tax Act and thus, the writ petition is to be allowed.

11. The learned Senior Standing Counsel appearing on behalf of the Income Tax Department objected the contentions raised on behalf of the writ petitioner in entirety by stating that it is a case of mistake apparent on record. An attempt to piece the facts of the case made by the petitioner cannot be accepted. The respondent in clear terms mentioned the mistake sought to be rectified in the impugned notice itself. The impugned notice reveals that the assessee had debated provision for bad and doubtful debts (reserve created for NPA) of Rs.79,84,914/- only in the financials. However, deduction under Section 36 (1) (viii) was allowed for Rs.11,75,76,692/-. This has to be restricted to the provision for bad and doubtful debts made by the assessee in financials. The assessee has already submitted his reply. The reply is yet to be considered by the



Authorities Competent. Thus the writ petition is premature and is to be dismissed on the ground of maintainability. The respondent has not formed any final opinion and the writ petition is filed based on presumptions and assumptions. If at all, the petitioner is of the opinion that there is no mistake apparent on record and it is a disputable issue, which is sought to be reopened, the said grounds shall be raised and the Authorities Competent are bound to consider those grounds and pass orders. Even in case an order is passed against the petitioner, the petitioner is having right of appeal and, therefore, the present writ petition is to be dismissed on the ground of maintainability itself.

12. The learned Senior Standing Counsel by referring the counter affidavit filed by the respondent have stated that the mistake apparent on record sought to be rectified by invoking Section 154 of the Income Tax Act, is enumerated in Paragraph Nos.5 & 6 of the counter affidavit which reads as under:

"5. I submit that for claiming depreciation u/s.32 the petitioner had to file detailed particulars and had to make a specific claim for depreciation allowance, provided that depreciation could not be allowed where the required particulars had not been furnished by the petitioner and no claim for the depreciation had been made in the return.

6. I submit that it is clear that the provision for bad and doubtful debts is under section 36 (1) (viii). Unless amount of bad and doubtful debts is debited to the provision for bad and doubtful debts account and the deduction admissible u/s.36 (1) (viii) is limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account. The language and intention of the legislature is clear and unambiguous and therefore the mistake in this case is apparent from record and thus issue of notice under section 154 is within ambit of section 154 of the Income Tax Act, it is mistake apparent from record."

13. The scope of Section 154 is also elaborated by the learned Senior Standing Counsel by stating that with a view to rectify, the Income Tax Authority referred to Section 116 may also be a ground to invoke Section 154 of the Act. Thus, it is a definite case of mistake apparent on record and, therefore, there is no error on the part of the respondent for invoking Section 154 of the Act. If at all, the contrary opinion is raised by the petitioner, it is left open to him to avail the



opportunity provided and place all the grounds before the Authorities Competent enabling them to consider on merits and in accordance with law.

14. The principles to be adopted for the purpose of entertaining a writ petition against show-cause notice under Article 226 of the Constitution of India are that:

a) if any show cause notice is issued by the incompetent authority;

b) if any show-cause notice has been issued on malafide grounds; then alone a writ petition is entertainable.

A writ against a show cause notice, High Courts cannot venture into adjudication of merits and such a roving procedures cannot be under taken in a writ proceedings. In other words, in the event of entertaining the grounds on merits, the rights of the parties would be prejudiced as the authorities have not made a finding in respect of those disputed facts on merits. All such facts and disputed grounds are to be adjudicated by the Original Authority with reference to the documents and evidences.

15. The power of judicial review under Article 226 of the Constitution of India for the High Court is to scrutinize the processes through which a decision is taken by the Competent Authority and not the decision itself. Thus, the High Court cannot entertain merits of the case in cases where show-cause notice is under challenge. Even in case of raising allegation of malafides, the authority against whom such an allegation of malafides are raised is to be impleaded as a party-respondent in its personal capacity. Thus, the scope of entertaining writ petition against a show-cause notice is limited and, therefore, in this perspective the present writ petition is to be considered.

16. Let us now consider the scope of Section 154 which denotes rectification of mistake. Section 154 (1) stipulates that " With a view to rectifying any mistake apparent from the record an income-tax authority referred to section 116 may -

(a) amend any order passed by it under the provisions of this Act;

(b) amend any intimation under sub-section (1) of section 143;

(c) amend any intimation under sub-section (1) of section 200A;

(d) amend any intimation under sub-section (1) of section 206CB;



17. As rightly pointed out by the learned counsel for the petitioner, by invoking Section 154 of the Income Tax Act, the authority cannot re-adjudicate the facts on merits. Disputable facts and circumstances cannot be adjudicated under Section 154 of the Income Tax Act. The learned counsel has pointed out that such an adjudication would cause prejudice to the interest of the assessee.

18. This Court is of the considered opinion that Section 154 cannot be converted as an appeal for entertaining a ground for adjudication of merits or disputable issues. Thus, the scope of Section 154 is undoubtedly limited with reference to the circumstances narrated under the provision itself.

Section 154 unambiguously enumerates that mistake apparent from record. Thus, the Authority Competent must be able to identify the mistake apparent from record, then he can issue notice under Section 154 providing opportunity to the assessee and pass an order.

19. In the present case, the respondent has stated clearly that the provision for bad and doubtful debts is under Section 36 (1) (viia). Unless amount of bad and doubtful debts is debited to the provision for bad and doubtful debts account and the deduction admissible u/s.36 (1) (vii) is limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account. The language and intention of the legislature is clear and unambiguous and therefore the mistake in this case is apparent from record and thus issue of notice under section 154 is within the ambit of section 154 of the Income Tax Act, and it is a mistake apparent from record.

20. It is contended that the respondent is not going to adjudicate the merits of the issue. They have intended to rectify the mistake regarding the amount of bad and doubtful debts is debited to the provision for bad and doubtful debts account and the deduction admissible under Section 36 (1) (vii) is limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account. It is contended that it is a mistake committed while passing an order of assessment. Therefore, such a mistake apparent from record is to be rectified. The learned Senior Standing Counsel, reiterated that the Authorities have not intended to go beyond the scope of Section 154 for rectification of mistake, which is apparent from record and, therefore, the writ petitioner is at liberty to defend his case before the Authorities Concerned regarding the grounds raised.

21. This Court is of the considered opinion that even in respect of the grounds raised, if at all the petitioner is of



an opinion that the Authorities may venture into the adjudication of disputed issues, it is for them to place all the judgments and facts with reference to Section 154 of the Income Tax Act. Contrarily, this Court cannot go into those facts and circumstances regarding the mistake apparent from record. The respondent is clear in their terms that they are not intended to go beyond the scope of Section 154 and the notice was issued specifically stating that the mistake apparent from record alone is to be created. Even impugned notice reveals that the nature of mistake proposed to be rectified is clear that the respondent has not taken any steps to adjudicate the disputable issues. Even otherwise also, the petitioner has got ample opportunities to place their grounds before the Authorities Competent and the Authorities are bound to consider the grounds on merits and in accordance with law. The petitioner had already submitted his reply, if necessary, they are at liberty to submit further explanations or documents.

22. With reference to the judgments cited on behalf of the writ petitioner, this Court is of the considered opinion that regarding the observations made by Apex Court of India in the case of T.S.Balaram, Income Tax Officer vs. Volkart Brothers, it was a case where Section 71 of the Income Tax Act, was applicable to the case of the respondent is not free from doubt. Therefore, the Income Tax Officer was not justified in thinking that on that questions there could be no two opinions which was not proved the scope of relevant provisions of the Act under Section 154 of the Income Tax. Thus, the Supreme Court in unambiguous terms held that the authorities competent cannot go beyond the scope of Section 154 of the Income Tax Act in the said case. The issue adjudicated was considered as disputable by Apex Court. However, the precedent laid down is that the Authorities Competent are empowered to invoke Section 154 of the Income Tax Act only if they find any mistake apparent on record and such a mistake is sought to be rectified. As far as the other two judgments of the Calcutta High Court are concerned, the facts are also dissimilar and further the proposition mooted by the learned counsel for the petitioner cannot be disputed as scope of Section 154 of the Income Tax Act is limited and the Authorities are empowered to invoke Section 154 only by adhering to the grounds contemplated under the said provision.

23. In the present writ petition, the respondent has established that they have not gone beyond the scope of Section 154 and they have taken steps to rectify the mistake apparent from record and the nature of mistake apparent from record is also furnished in the impugned notice issued under Section 154 of the Act. Thus the petitioner is at liberty to participate in the Section 154 proceedings and defend his case by availing opportunities provided by the Authorities. In the event of



passing final orders and if at all the petitioner is aggrieved from and out of that order, it is left open to him to prefer an appeal under the provisions of the Act.

24. With this liberty, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

Pns

To

The Deputy Commissioner of Income Tax,
O/o.The Deputy Commissioner of Income Tax,
Cuddalore Circle,
Soorappa Naicken Chavadi, Cuddalore - 607 002.

+1 cc to Mr. K. Ravi, Advocate. Sr.No.27835

+1 cc to Mr. A. P. Srinivas, Advocate. Sr.No.27807

W.P.No.20049 of 2018

AK-II(CO)
GN(16/07/2021)