

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 17023 of 2014

and

W.M.P. No. 1912 of 2021 & M.P. No. 1 of 2014
(Through Video Conferencing)

M/s.L-Cube Innovative Solutions P Ltd.
1148, I Block, Sixth Avenue,
Anna Nagar West,
Chennai - 600 040.

...Petitioner

Vs

1. The Commissioner of Income Tax,
Chennai-II,
121, Mahatma Gandhi Road,
Chennai - 600 034.

2. The Income Tax Officer,
Company Ward II (1),
121, Mahatma Gandhi Road,
Chennai - 600 034.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the Petitioner company in C.No.264/02/CIT-II/2013-14 on the file of the First Respondent and quash the impugned order dated 25.03.2014 and consequently direct the Respondents to grant the deduction/exemption/tax holiday benefit within the scope of Section 10B of the Income Tax Act, 1961 relating to the Assessment Year 2006-07.

For Petitioner : Mr.Kaushik
for Mr.S.Sridhar
For Respondents : Ms.Hema Muralikrishnan
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned order dated 25.03.2014 passed by the 1st respondent/Commissioner of Income Tax, Chennai, under Section 264 of the Income Tax Act, 1961 (hereinafter referred to as the IT Act, 1961).

2. By the impugned order, the 1st respondent has dismissed the revision petition dated 09.12.2009 filed by the petitioner against the order dated 06.10.2009 passed by the 2nd respondent/Income Tax Officer, Chennai, under Section 154 of the IT Act, 1961 rejecting the petitioner's application filed for rectification of the alleged mistakes in the assessment order passed under Section 143(1)(a) of the IT Act, 1961.

3. The Petitioner is engaged in providing software service and was entitled to avail the benefit of exemption under Section 10B of the IT Act, 1961. However, while filing the Income Tax Return on 30.11.2006, the petitioner failed to claim the benefit of exemption/deduction under Section 10B of the IT Act, 1961.

4. As per Section 80A(5) of the IT Act, if an assessee fails to make a claim in his return of income for any deduction under Section 10A or Section 10AA or Section 10B or Section 10BA or under any provision of the Chapter under the heading "C", no deduction shall be allowed to him thereunder.

5. It is the specific case of the petitioner that this was the first year when the filing of return on income was mandatory through electric mode. By the time when the Intimation dated 28.03.2008 was issued by the Income Tax Department, notice under Section 143(1)(a) of the IT Act was received by the petitioner on 18.05.2008 and the statutory period of limit prescribed for filing revised return under Section 139(5) of the IT Act as it stood then had already expired on 31.03.2008.

6. The learned counsel for the petitioner submits that the proviso read with Section 139 of the IT Act, 1961, during the relevant period read as follows:-

"Section 139-Return of Income:-

(1)

.....

(5) If any person, having furnished a return under sub-section (1), or in pursuance of a notice issued under sub-section (1) of Section 142, discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier:-

Provided that where the return relates to the previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year."

7. Under these circumstances, the petitioner was compelled to file petition for rectification of assessment under Section 154 of the IT Act on 18.08.2009 which came to be dismissed vide order dated 06.10.2009. Against the dismissal of the said order, the petitioner preferred the 1st revision petition on 09.11.2009 under Section 264 of the IT Act which also came to be dismissed by an order dated 08.03.2011 and therefore, the 2nd revision petition was filed by the petitioner on 25.02.2013 which also came to be disposed of by the impugned order dated 25.03.2014.

8. The learned counsel for the petitioner submits that the respondents erred in not allowing the rectification and in not condoning delay in claiming the exemption/deduction under Section 10B of the IT Act primarily on account of fact that 143 (1) Intimation was received by the petitioner on 18.05.2008, by which time, time for filing revised return had expired. He further submits that well-settled principles of law and that rectification of order includes rectification of mistake in the return under Section 139(1) of the IT Act. In this connection, he relied on the following decisions:-

i. C.Parikh and Co. Vs. Commissioner of Income Tax, (1980) 122 ITR 610 (GUJ) : (1990) 4 TAXMAN 224.

ii. Parekh Bros Vs. Commissioner of Income Tax, (1984) 150 ITR 105 (KER) : (1983) 15 TAXMAN 539.

iii. RashtriyaVikas Ltd. Vs. Commissioner of Income Tax and others, (1992) 196 ITR 694 (ALL) : (1992) 60 TAXMAN 74.

iv. Jute Corporation of India Ltd. Vs. Commissioner of Income Tax and Another, (1991) 187 ITR 688 (SC).

v. Ramdev Exports Vs. Commissioner of Income Tax, (2001) 251 ITR 873 (GUJ) : (2002) 120 TAXMAN 315 (GUJ).

9. He further submits that the benefit of exemption/deduction under Section 10B of the IT Act has been given to the petitioner for the succeeding Assessment Year 2007-2008 vide Assessment Order dated 09.12.2009.

10. The learned counsel for the petitioner relied upon the decision of this Court rendered in Annamallais Agencies Vs Commissioner of Income-Tax and in M/s.Craftsman Automation P Ltd., Coimbatore Vs The Commissioner of Income Tax-II, Coimbatore and another in W.P.No.3967 of 2009. He submits that delay in filing the return cannot be act in prejudice to the case of the petitioner for rectification of the order and for a revision of the order, the Court has already taken a view in Craftsman Automation P Ltd (referred to supra). The learned

counsel for the petitioner further submits that dealing with a similar situation, the Division Bench of the Bombay High Court in *Sese Goa Ltd., Vs Additional Commissioner of Income-Tax*, allowed the similar relief to the petitioner herein.

11. The learned counsel for the petitioner further submits that this Court in *Annamallais Agencies Vs Commissioner of Income-Tax*, has held that for the purpose of rectification of an order under Section 154 of the IT Act, 1961, the record for the purpose does not merely mean the assessment order alone. It is submitted that the Court held that the return, the things which accompanied the return are also part of the record and when there was an omission on the part of the Assessing Officer to take note of the contents of that record, while making his order, the mistake in the assessment can be regarded as apparent.

12. The learned counsel also drew my attention to the decision of this Court in *M/s.Craftsman Automation P Ltd., Coimbatore Vs The Commissioner of Income Tax-II, Coimbatore* and another, wherein, the Court held as follows:-

"7. A careful look at sub-sections (1) and (2) of Section 154 would allow that the Original Authority is conferred with two types of powers to make an amendment. The first type of power is to make an amendment suo motu. The second type of power is to order an amendment whenever any mistake is brought to his notice either by the assessee or by the deductor or by the Collector.

8. The types of mistakes that could be rectified under Section 154 are also two fold. While Sub-section (1) uses the expression "any mistake apparent from the records", Sub-section (2) uses the expression "rectifying any such mistake which has been brought to its notice". In other words, the type of mistake that Sub-section (1) deals with is different from the type of mistake that clause (b) of Sub-section (2) deals with. While Sub-section (1) deals with a mistake apparent from the record, clause (b) of Sub-section (2) deals with a mistake that is brought to the notice of the Assessing Officer by the assessee. The word "such" used in clause (b) of Sub-section (2) is actually not in ejusdem generis with Sub-section (1), but it goes along with what follows in clause (b) itself, namely "mistake which has been brought to its notice". Therefore, the thinking in the mind of the Commissioner as well as the Tribunal that Section

154 is available only to correct a mistake apparent from the record, may not be in tune with the Scheme of Sub-section (2) of Section 154.

9. That takes us to the next question as to what could be construed as a mistake so as to fall within either Sub-section (1) or Sub-section (2) of Section 154. According to the Assessing Officer, the mistake was on the part of the assessee in not filing an auditor's certificate at the time of filing of the return. But, according to the assessee, in his reply to the notice under Section 263, the mistake was on the part of the Assessing Officer is not giving an opportunity under Section 139(9).

10. Mistakes can be of several kinds. An omission to produce the record is as much a mistake as an omission to take note of a record. Therefore, the Tribunal as well as the Commissioner were wrong in presuming that the case would not fall under Section 154. Hence, the questions of law are answered in favour of the assessee and the appeal is allowed. No costs."

13. The learned counsel for the petitioner also submitted that in the context of Section 35 of the Indian Income Tax Act, 1922 which is pari materia with Section 154 of the Income Tax Act, 1962. The Hon'ble Supreme Court in *Maharana Mills (P.) Ltd Vs Income-Tax Officer*, 36 [1956] 36 ITR 360 (SC), wherein, held as follows:-

" "(1) The Commissioner or Appellate Assistant Commissioner may, at any time within four years from the date of any order passed by him in appeal or, in the case of the Commissioner, in revision under section 33A and the Income-Tax Officer may, at any time within four years from the date of any assessment order or refund order passed by him on his own motion rectify any mistake apparent from the record of the appeal, revision, assessment or refund as the case may be, and shall within the like period rectify any such mistake which has been brought to his notice by an assessee"

The question therefore is was it a mistake apparent from the record which was Income-tax Officer has rectified. It was submitted that recalculation is not rectifying a mistake which is apparent from the record. The words used in the

section are "apparent from the record" and the record does not mean only the order of assessment by it comprises all proceedings on which the assessment order is based and the Income-tax Officer is entitled for the purpose of exercising his jurisdiction under section 35 to look into the whole evidence and the law applicable to ascertain whether there was an error. If he doubts the written down value of the previous year it is open to him to check up the previous calculations and if he finds any mistake it is open to him to make fresh calculations in accordance with the law applicable including the rules made thereunder.

The power under section 35 is not doubt limited to rectification of mistakes which are apparent from the record. A mistake contemplated by this section is not one which is to be discovered as a result of an argument but it is open to the Income-tax Officer to examine the record including the evidence and if he discovers any mistake he is entitled to rectify the error provided that if the result is enhancement of assessment or reducing the refund then notice has to be given to the assessee and he should be allowed a reasonable opportunity of being heard."

14. Defending the impugned order passed by the respondents, the learned counsel for the Income Tax Department submits that the petitioner has not challenged the order dated 08.03.2011 and therefore the rejection of application for rectification of order dated 18.08.2009 had attained finality. It is submitted that the petitioner has filed only a subsequent revision petition for reviewing the earlier order dated 08.03.2011 and therefore the writ petition was not maintainable.

15. The learned counsel for the respondents further submits that it was open for the petitioner to file a statutory appeal against the Assessment Order made under Section 143(1)(a) of the IT Act, 1961 dated 28.03.2008 and therefore relied on the similar decision relied by the petitioner in Commissioner of Income Tax Vs Malind Laboratories P. Ltd in T.C.A. No. 874 of 2014, where in the Honourable Division Bench of this Court complied the decision of the Hon'ble Supreme Court in Ram Lal Vs Reva Coal Field Ltd. AIR [1962][SC] 361 and dismissed the case by answering the question of law raised against the revenue.

16. The learned counsel also submits that the scope of interference under Article 226 of Constitution of India is

limited and therefore submits that as per the Hon'ble Supreme Court in Tata Cellular Vs Union of India, (1994) 6 SCC 651, the present writ petition is to be dismissed has none of the constitutions enumerated by the Hon'ble Supreme Court are attracted. She draws my attention to Para 77 of the said decision, which reads as under:-

"77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?

2. Committed an error of law,

3. committed a breach of the rules of natural justice,

4. reached a decision which no reasonable tribunal would have reached or,

5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly, put the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R.V. Secy of State for Home Department, ex p Brind, (1991) 1 AC 696 : (1991) 2 WLR 588 (HL), Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of

proportionality. In all these cases, the test to be adopted is that the court should, 'consider whether something has gone wrong of a nature and degree which requires its intervention'."

17. The learned counsel for the respondents further refers to another decision of the Karnataka High Court in Nataraju (HUF) Vs Principal Commissioner of Income Tax, Mysuru, [2018] 91 TAXMAN 467, wherein, scope of Section 264 of the IT Act, 1961, was explained by the Court.

Paragraph (9) of the said order reads as under:-

"9. The fact that the revision petitions under Section 264 of the Act was filed by them within a year of passing of the impugned assessment order on 21.03.2014 namely, on 09.03.2015 and 17.03.2015, shows that the petitioners-assesseees were very well guided about the relevant provisions of the Income Tax Act and for the reasons best known to them, they avoided the appellate remedies provided in the Act."

18. The learned counsel for the respondents/revenue submits that the petitioner has not filed revised returns in time and therefore the petitioner is not entitled to rectification and revision of the order.

19. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents.

20. This is a case where the petitioner had failed to claim the benefit of exemption/deduction under Section 10B of the IT Act, 1961 as per Section 80A(5) of the IT, 1961 in Income Tax Returns. The petitioner was required to make a claim in the said Returns filed under Section 139 of the IT Act, 1961.

21. In case, no such deductions are claimed when the Returns filed under Section 139 of the IT Act, 1961, no deduction can be allowed. Under these circumstances, the Assessment Order passed by the Assessing Officer under Section 143 (1) (a) of the IT Act, 1961 cannot be said to be an erroneous order passed by the Assessing Officer as it is based on the Returns filed by the petitioner. Assessments under IT Act, 1961 are driven based on the Returns that are filed under Section 139 of the IT Act, 1961.

22. The Hon'ble Division Bench of this Court in Annamallais Agencies Vs Commissioner of Income-Tax has accepted the proposition that for the purpose of rectification of error apparent on the face of record can be corrected. The expression record is not merely confined to error/mistake in the Assessment Order. It would include the mistake in Return and documents which accompanied the Returns as a part of the record. If there

has been omission on the part of the Assessing Officer therein to take note of the contents of that record, while making his order, the mistake in the assessment can be rectified.

23. Though the said order is dated 28.03.2008, it is the case of the petitioner that the intimation was received by the petitioner only on 18.05.2008 by which time, the time to file revised returns under Section 139(5) had already expired on 31.03.2008. Therefore, the only option available to the petitioner was to file rectification petitioner before the Assessing Officer under Section 154 of the IT Act, 1961, which the petitioner did by filing of rectification petition on 18.08.2009.

24. However, the Assessing Officer by an order dated 06.10.2009 rejected the same while recording that the petitioner had enclosed the revised returns by stating that the assessee had filed the return on 30.11.2006 and if there was any mistake found in the returns, the petitioner could have to filed a revised return on or before 31.03.2008. However, the intimation issued under Section 1431A of the IT Act, 1961 is dated 28.03.2008. It is about 3 days prior to the expiry of limitation for filing revised return on 31.03.2008.

25. Therefore, I am of the view that even if the intimation dated 28.03.2008 was despatched on the said date after it was signed in all likelihood, it could not have been received by the petitioner on 31.03.2008 to file a revised returns in time. Therefore, the petitioner was entitled for rectification under Section 154 of the IT Act, 1961.

26. In my view, the rejection of the application for rectification by the Assessing Officer under Section 154 of the IT Act, 1961 was unjustified, considering the fact that the petitioner is entitled to substantive the benefit and delay, if any, wholly attributed on account of the system.

27. The rejection of the revision application filed by the petitioner vide order dated 08.03.2011 and vide order dated 25.02.2013 impugned herein, it is also not justified as the officers acting under the IT Department are duty bound to extend substantive benefits that are legitimately available to an assessee.

28. Dealing with a somewhat similar case, this Court in M/s.Craftsman Automation P Ltd., Coimbatore Vs The Commissioner of Income Tax-II, Coimbatore and another in W.P.No.3967 of 2009 vide order dated 03.12.2019, has allowed the benefit where returns was filed beyond the period of limitation prescribed under Section 139(5) of the IT Act, 1961.

The operative portion of the order reads as under:-

"20. As far as non-filing of the returns for the Assessment Year 2004-05 is concerned, the time-limit prescribed for revising the return under Section 139 (1) in terms of Section 139(5) would not eclipse the powers vested with the 1st respondent under Section 264 of the Act to act fairly. In this connection, reference has been made to the decision of this Court in Sri. SelvaMuthu Kumar Vs. Commissioner of Income Tax, [2017] 394 ITR 247 a Division Bench of this Court held as follows:-

.....

.....

25. The 1st respondent has observed that as per sub-Section 2 to Section 80JJAA of the Income Tax Act, 1961, deduction cannot be allowed unless the assessee furnishes certificate along with the return of income, the report of the accountant, as defined in the explanation below such sub-section (2) of Section 288 giving such particulars and the report as may be prescribed. Secondly, it is stated that the revised return was filed beyond the period of limitation prescribed under Section 139(5) of the Income Tax Act, 1961.

.....

.....

28. The Assessing Officer is also duty-bound to extend substantive benefits which were available and arrive at just tax to be paid. Benefits which are otherwise available to an assessee cannot be denied on the ground of technical failure of an assessee is such assessee is legitimately entitled to such substantive benefit. In this connection, it may be apt to refer to the following quotation of the Hon'ble Supreme Court in the case of Commissioner of Sales Tax Vs. Auriya Chambers of Commerce (1986) 3 SCC 50, wherein the Hon'ble Court held that procedures are handmaids of justice and not mistress of law. In Unichem Laboratories Vs. Commissioner of Central Excise, (2002) 7 SCC 145, the Hon'ble Supreme Court held that it is no part of duty of an officer of the revenue to demand tax which are not due to it merely to augment more revenue. They must act fairly and justly.

29. In this case, the 2nd respondent has not given to benefit while reassessing the income of the petitioner while passing order on 29.12.2008. It is precisely for dealing with situations like this, powers have been vested with superior officers like the respondent under Section 264 of the Income Tax Act, 1961.

30. Though, orders have to be passed subject to provisions of the Act, the intention of the legislative is not whittle down or deny benefit which are legitimately available to an assessee.

31. Failure to file return within the period under Section 139 of the Income Tax Act, 1961 for the purpose of claiming benefit of deduction under Section 80 AAJJ of the Income Tax Act, 1961, in my view is a more procedural formality. In my view, denial of substantive benefit cannot be justified since the assessment itself was reopened by the 2nd respondent and the assessment already made on 29.12.2006 was put to jeopardy.

32. If an assessee is entitled to benefit, technical failure on the part of an assessee to claim the benefit in time, should not come in the grant of substantial benefit/benefits that was/were otherwise available under the Income Tax Act, 1961 but for such technical failure.

33. I am therefore of the view that the petitioner would be entitled to the benefit of Section 80JJAA of the Income Tax Act, 1961. The 1st respondent ought to have allowed the application filed by the petitioner under Section 264 of the Income Tax Act, 1961.

34. In the light of the discussion, I am of the view that the petitioner is entitled to partial relief at this stage. Accordingly, the impugned order is set aside by condoning the delay in filing the return. The 2nd respondent is therefore directed to pass appropriate orders on merits in accordance with law, ignoring the delay on the part of the petitioner in filing the returns under Section 139 (5) of the Income Tax Act and/or failure to furnish the report of an accountant.

35. The 2nd respondent shall pass a speaking order within a period of three months from the date of receipt of a copy of this order. Needless to state, the petitioner shall be heard before order is passed.

36. Writ Petition stands allowed with the above observation. No cost."

29. In view of the above decision of this Court and the discussions, I am inclined to allow this writ petition. Accordingly, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Income Tax,
Chennai-II,
121, Mahatma Gandhi Road,
Chennai - 600 034.
2. The Income Tax Officer,
Company Ward II (1),
121, Mahatma Gandhi Road,
Chennai - 600 034.

+1CC Mrs.Hema Muralikrishnan Advocate SR No 6640

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W.P. No. 17023 of 2014

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SRG 12/07/2021