IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.3099 of 2017

Depak Kumar Chakravorty .... ***Petitioner***
Mr. R.N. Parija, Advocate

-versus-

Union of India & Others .... ***Opposite Parties***
Mr. S.S. Mohapatra, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN

ORDER
08.12.2022

Order No.

06. 1. The challenge in the present petition is to an order dated 22nd December, 2016 passed by the Principal Commissioner of Income Tax, Sambalpur under Section 264 of the Income Tax Act rejecting the revision petition filed by the Petitioner-Assessee against an order dated 23rd November, 2015 passed by the Income Tax Officer, Ward No.4, Rourkela, purportedly correcting "the apparent mistake in tax calculation resulting in issuance of refund of Rs.62,580/- under Sections 147/144 of the Act" by invoking the power under Section 154 of the Act.

2. The reason for invoking the power under Section 154 of the Act, as explained in para-9 of the counter affidavit filed in the present petition by the Revenue was as under:

> "9. That, in reply to the averments made in paragraphs 2 (d) of the aforesaid writ petition, it is submitted that the said facts are not fully correct and hereby denied. It is submitted that the assessment was completed u/s.

> 144/147 of the I.T. Act 1961 in the case of the assessee/Petitioner and refund of Rs.62,580/- was issued. Further, on verification of records, it was found that no refunds should be issued to any assessee if the assessment is completed u/s 144 of the I.T. Act, 1961. This being a mistake apparent from record the assessing officer i.e. the Opp. Party No. 3 rectified the mistake made under 'tax calculation' part of the assessment order dated 30.01.2013 under Section 154 of the Income Tax Act, 1961 vide order dated 23.11.2015."

3. The refund was directed to be made to the Petitioner-Assessee in the reassessment proceeding under Section 147 of the Act for the relevant Assessment year i.e. 2010-11. According to the Revenue, in such proceeding, no refund could have been issued.

4. The above 'error' was in fact a legal issue, and not an arithmetical or calculation error as is sought to be projected by the Revenue. This was not a matter to be dealt with under Section 154 of the Act. Consequently, this Court has no hesitation in setting aside both the order dated 23rd November, 2015 of the Income Tax Officer and the subsequent order dated 22nd December, 2016 of the Principal Commissioner of Income Tax, Sambalpur.

5. The writ petition is allowed in the above terms. No order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

Aks/Laxmikant