

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16168 of 2021

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Hotel Raj Laxmi, through its Proprietor Sri Manoj Kumar Sah Son of Late
Durga Prasad Resident of Navarattan Hatta, P.O. - Purnea, P.S. - Sahayak
Khazanchi Hatt, in the town and District of Purnea, Bihar.

... .. Petitioner/s

Versus

1. The Principal Commissioner of Income Tax- I, Central Revenue Building,
Bir Chand Patel Path, Patna.
2. The Income Tax Officer, Ward - 3 (1), Purnea.
3. The Deputy Commissioner of Income Tax, Centralized Processing Centre,
Post Bag No. 2, Electronic City Post Office, Bangalore - 560500.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajay Kumar Rastogi, Sr. Advocate
Mr.Parijat Saurav, Advocate
Mr.Aakash Kumar, Advocate
Mr. Smarti Singh, Advocate
For the Respondent/s : Mrs. Archana Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-09-2023

A clear case of a *bona fide* mistake not having been
corrected by a revision of return, filed within time or an appeal
or revision taken against the appropriate orders; is the question



raised in the writ petition.

2. The assessee is concerned with assessment year 2016-17. A return of income was filed as is indicated at Annexure-2. The assessee showed Rs.10,08,359/- as the salary/remuneration to partners of the firm at Column 38 of Annexure-2 return. In fact, as is evident from the Annexure-2 itself, there were only two partners one of whom alone was paid the remuneration of Rs.3,54,000/-. The other expenses as indicated in the Profit and Loss Account produced at Annexure-3 were other business expenses entitled to exemption. Obviously, the assessee committed a mistake in filing the return and did not file a revised return till the Section 143(1) intimation was issued to the assessee, as is evident from Annexure-4.

3. The assessee is said to have filed an appeal under Section 246A, which was withdrawn and a revision filed under Section 264. The assessee filed the revision under Section 264 against the rejection of the application filed for rectification under Section 154 which is produced as Annexure-6.

4. We heard learned Senior Counsel Shri Ajay Kumar Rastogi and Smt. Archana Sinha, learned Standing Counsel for the respondent. Learned Senior Counsel relied on



the decisions of the Madras High Court in ***Sharp Tools v. Principal Commissioner of Income -Tax; (2020) 421 ITR 90 (Mad)*** and ***C. Parikh & Co. v. Commissioner of Income-Tax, Baroda (1980) 122 ITR 610 (Guj)***, a Gujrat High Court judgment. Reliance was also placed on the CBDT Circular bearing no. 14 (XL-35) dated 11.04.1955. Learned Senior Standing Counsel for the Department relied on ***Commissioner of Income tax v. Keshri Metal (P) Ltd. 1999 234 ITR 785 (MP)***.

5. We will first look at the decisions, of which the one decided by the High Court of Madras was almost in similar circumstances. After receipt of an intimation under Section 143(1), realising a mistake that occurred inadvertently, the assessee filed a revised return which was beyond time. Hence, an application was made for rectification under Section 154, which was rejected, against which a revision petition was filed under section 264. The Principal Commissioner though finding the mistake to be inadvertent and the claim to be *bona fide*, rejected the writ petition. There the mistake was found to be a typographical error, possible of correction in a rectification application; unlike the present case, as we shall shortly indicate.

6. The learned Senior Counsel for the assessee



specifically placed reliance on the decisions of the Hon'ble Supreme Court relied on, in the decision of the Madras High Court; *Laxmibai v. Bhagwantbuva; (2013) 4 SCC 97* and *Union of India v. Ajeet Singh; (2013) 4 SCC 186*. Both the aforesaid decisions spoke of substantial justice being done when obvious failure of justice has occurred, without adverting to mere technical flaws. We bow to the above proposition, but however, cannot ascribe to the view that, against the rejection of the rectification application an appeal could be entertained by the Commissioner sitting in the visitorial jurisdiction; to correct the errors of the nature, that has occurred herein. This is especially so since the consideration of the Commissioner, against a rejection of a rectification application would be confined to whether a rectification is possible; which should be errors apparent from the face of the record and not those which can be found out only by a process of deduction or analysis.

7. We also notice *Keshri Metal (P) Ltd. (supra)* was a case in which additions were made based on excess depreciation granted, under section 154, by the Assessing Officer. This was interfered with by the Appellate Authorities. The Hon'be Supreme Court found that there was no occasion



for rectification, since the additions made were not apparent, as coming out from the records of the case.

8. In the present case also the assessee had declared in the return, Rs.10,08,359/- as remuneration paid to the partners which would be exigible to tax in the hands of the partners. However, the remuneration paid to the partners as declared in the very same return came only to Rs.3,54,000/-. There are a number of expenses shown under Annexure-3, Profit and Loss Account and it requires a process of deduction, as to the expenses claimed, to come to the conclusion that those were in fact to be declared as 'Other Expenses'; wherein, there is specific indication that the assessee should specify the nature and amount. Hence, it cannot be said that even if it is a *bona fide* mistake, there can be a rectification made under Section 154. In such circumstances neither the order under Section 154 can be assailed nor can the rejection of a revision, from that order under Section 154..

9. We are not in finding so, to totally frustrate the claim of the assessee. As has been rightly pointed out by learned Senior Counsel, Section 246A of the Income Tax Act, 1961 provides for an appeal even against an intimation under Section 143(1). The provision for filing a revised return is available



under Section 139(5), which extends to one year after the end of the assessment year or till such time as an assessment order is passed, whichever is earlier. In the present case the assessment year ends on 31.03.2017 and the assessee's remedy to file a revision as per the first limb of Section 139(5) ends only on 31.03.2018; one year from the last date of the assessment year. However, the intimation having come on 09.05.2017, it has to be treated as an assessment order which is also appealable under Section 246A; there can be no revision of return after the intimation under Section 143(1). The assessee all the same could have either filed an appeal under Section 246A or a revision under Section 264, From the intimation under Section 143(1).

10. Under Section 264, the Commissioner has the authority, either *suo moto* or on an application to call for the records of any proceeding under the Act in which any order has been passed and after making such an enquiry, pass such orders therein not being an order prejudicial to the assessee, as he thinks fit. This confers a discretion on the Commissioner, in a revision, to enable correction of such *bona fide* errors made by the assessee. It cannot be said that on account of the assessee making an inadvertent mistake in the returns filed and the same



not having come to their notice before an assessment order is issued or till the end of one year from the last date of the assessment year; the assessee would be frustrated from correcting the *bona fide* mistake, thus bringing upon itself a massive tax liability.

11. This is perfectly the circumstance under which the Hon'ble Supreme Court in the cited decisions said that in sub-serving the cause of substantial justice, technical considerations have to be overlooked. The correction of a mere irregularity or trivial breach of law, cannot be frustrated by technical considerations and the endeavour should always be, to do real and substantial justice to the parties; which power is available to the Commissioner under Section 264. Though a rectification under Section 154 may not be permissible, in the facts of the case which, according to us requires a process of deduction, the Commissioner is clothed with such powers under Section 264. In a revision against the intimation under Section 143(1), a due enquiry can be carried out, wherein the assessee would be able to point out the specific instances, of the expenses incurred and its nature, thus enabling exemption from payment of tax to that extent.

12. We also do not see any applicability of the



CBDT Circular, relied on by the petitioner. Therein, what has been espoused by the CBDT is the laudable objective of the officers of the Department, not taking advantage of the ignorance of the assessee and providing assistance to the taxpayer, in every reasonable way so as to claim and secure reliefs as provided under the Act. The returns filed herein, by itself does not provide the Assessing Officer with the capacity to enable such a consideration. In fact, the assessee wrongly declared more than 10,00,000/- remuneration paid to the Directors, which is not reflected in the return itself. The Assessing Officer could not have devined that it would be business expenses, entitled to exemption from tax. Even at the stage of rectification, as we observed above, there has to be a process of deduction, by which alone the nature and extent of the business expenses could have been allowed by the Assessing Officer.

13. We, hence, do not find any infirmity in the orders impugned, but however, leave the assessee with the remedy to file an appeal or revision from the intimation under Section 143(1); the delay in which would be condoned on the compelling circumstances of the assessee having pursued his remedy, but under a different provision against a different order;



which provision only permitted rectification of mistakes, apparent from the records. The writ petition though rejected, it would be with the above reservation of liberty.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	19.09.2023
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