IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.03.2020

DELIVERED ON : 10.03.2020

C O R A M

THE HON'BLE Mr.JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

T.C.A.Nos.370 & 371 of 2019

M/s.Nagaraj and Company Pvt. Ltd.,
156, Developed Industrial Estate,
Perungudi,
Chennai – 600 096

... Appellant in both TCAs.

Versus

The Assistant Commissioner of Income Tax,
Company Circle-IV(4),
Chennai – 600 034. ... Respondent in both TCAs.

PRAYER in TCA.No.370 of 2019: Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 to set aside the order of the Income Tax Appellate Tribunal, "D" Bench, Chennai dated 11th October, 2012 in ITA.No.200/Mds/2012 AY-2004-05.

PRAYER in TCA.No.371 of 2019: Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 to set aside the order of the Income Tax Appellate Tribunal, "D" Bench, Chennai dated 11th October, 2012 in ITA.No.199/Mds/2012 AY-2003-04.

For Appellant in both TCAs. ... Mr.R.Venkatnarayanan

For Respondent in both TCAs.... Mr.Karthik Ranganathan

COMMON JUDGEMENT

Judgement delivered by ABDUL QUDDHOSE,J.

The assessee has filed these appeals under Section 260-A of the Income Tax Act, 1961 aggrieved by the common order dated 11.10.2012 passed by the Income Tax Appellate Tribunal "D" Bench, Chennai.

Brief facts leading to the filing of these Tax Case Appeals:

2. The assessee who is the Appellant herein has filed returns of income tax for the Assessment Years 2003-04 and 2004-05. It is the case of the Appellant/Assessee that they omitted to claim deduction for the interest amounts paid by them to Industrial Development Bank of India (in short "IDBI") under Section 43B of the Income Tax Act. It is their case that after noticing the mistake of omitting to claim deduction for interest payments, they filed separate petitions under Section 154 of the Income Tax Act, 1961 seeking rectification of the mistake on account of the said omission. The Assessing Officer rejected the rectification petitions on 06.06.2007 by separate orders on the ground that the

mistake is not apparent from the record as it involves debatable point of law. Aggrieved by the separate orders dated 06.06.2007 passed by the Assessing Officer, the Appellant/Assessee preferred the statutory appeals before the Commissioner of Income Tax (Appeals)-VI, Chennai in ITA.No.194/10-11 & ITA.No.193/10-11. The Commissioner of Income Tax (Appeals)-VI, Chennai confirmed the orders of the Assessing Officer by dismissing the appeals on 28.11.2011 by separate orders on the ground that merely by relying on figures given in financial statements, one cannot arrive at the amount allowable under Section 43B especially when the quantum of principal and interest waived in one time settlement is not apparent from record. Aggrieved by the separate orders dated 28.11.2011 for the respective assessment years, the Appellant/Assessee preferred separate Appeals before the Income Tax Appellate Tribunal, 'D' Bench, Chennai in ITA.No.200/Mds/2012 & ITA.No.199/Mds/2012. The Income Tax Appellate Tribunal by a common order dated 11.10.2012 for both the Assessment Years dismissed the Appeals and confirmed the findings of the Assessing Officer as well as the Commissioner of Income Tax (Appeals)-VI on the ground that when the Assessments have been completed based on the computation of income filed by the

Appellant/Assessee, it cannot be stated that such assessments suffered from any mistake apparent from record on an item of expenditure never claimed by the Assessee for allowance. Aggrieved by the common order dated 11.10.2012 passed by the Income Tax Appellate Tribunal, these Tax Case Appeals have been filed under Section 260-A of the Income Tax Act, 1961.

3. The following substantial questions of law have been raised by the Appellant/Assessee in the grounds of both the tax case appeals:

> *"1.Whether on the facts and circumstances of the case, the Tribunal was right in holding that the Appellant's claim for allowing outstanding interest on loans paid to IDBI under section 43B was not a rectifiable issue coming within the purview of Sec 154 of the Act?*
>
> *2.Whether on the facts and circumstances of the case, the Tribunal was right in holding that the CBDT Circular No.669 dt 25.10.1993 is not applicable to the facts of the case?"*

4. Heard Mr.R.Venkatnarayanan, learned counsel for the Appellant and Mr.Karthick Ranganathan, learned counsel for the respondent.

Submissions of the learned Counsels:

5. According to the learned counsel for the Appellant/Assessee , the Appellant/Assessee while filing their returns for the Assessment years 2003-04 & 2004-05 omitted to claim deduction under Section 43B of the Income Tax Act, for the interest amounts paid by them to IDBI which is apparent from the returns. According to him, only in such circumstances, the Appellant/Assessee filed applications under Section 154 of the Income Tax Act, 1961 for rectification of the mistake committed in the original returns. According to him, interest payments are undisputed as it is reflected in the ledger extract which is filed as a document in the typed set of papers. According to him, the omission to claim deductions for interest payments is not deliberate and only by mistake, deductions towards interest payments were not claimed by the Appellant/Assessee in their original returns for the Assessment Years 2003-04 & 2004-05. According to the learned counsel for the Appellant since the mistake

committed by the Appellant/Assessee is apparent from the record namely the ledger extract, an application for rectification under Section 154 of the Income Tax Act is maintainable. According to him, the authorities below have erroneously rejected the applications under Section 154 of the Income Tax Act filed by the Appellant/Assessee.

6. The learned counsel for the Appellant drew the attention of this Court to the following authorities:

(a) ***Commissioner of Income Tax Vs. Pruthvi Brokers & Shareholders (P) Ltd.***, reported in ***(2012) 252 CTR 0151(Bombay High Court)***

(b) ***Commissioner of Income Tax vs. Lakshmi Vilas Bank*** reported in ***(2010) 329 ITR 0591***

(c) ***Anchor Pressings (P) Ltd vs. Commissioner of Income Tax*** reported in ***(1986) 161 ITR 159 (SC)***

7. Relying on the aforesaid decisions, the learned counsel for the Appellant/Assessee would submit that since the mistakes committed by the Appellant/Assessee in their returns filed for the assessment years

2003-04 & 2004-05 is not deliberate and is apparent from the record, the authorities below have erroneously rejected the applications filed by the Appellant/Assessee under Section 154 of the Income Tax Act, 1961.

8. Per contra, learned standing counsel for the respondent would submit that the Assessing Officer having completed the Assessments for the Assessment years 2003-04 & 2004-05, based on the returns filed by the Appellant/Assessee, it cannot be stated that such assessments suffer from any mistake apparent from the record. According to him, when the assessments have been completed, the only remedy that was available to the assessee is to file revision of assessment under Section 139(5) of the Income Tax Act, 1961 before completion of Assessment or within one year from the end of the assessment year whichever is earlier. According to him, the Appellant/Assessee having failed to file revision of Assessment to rectify the mistake within the prescribed period, the Appellant/Assessee cannot resort to section 154 of the Income Tax Act, which is meant to rectify mistakes apparent from the record and not meant to rectify omissions committed in the original returns.

Discussion:

9. Any rectification of mistake under Section 154 of the Income Tax Act, 1961 can be sought for only when it is apparent from the record. As evident from the section, the mistake must be one which is patent, which is obvious and whose discovery is not dependent on further investigation.

10. We shall now examine as to whether the omission to claim deduction for interest payments in the original returns for the Assessment Years 2003-04 & 2004-05 will enable the Appellant/Assessee to file applications under Section 154 of the Income Tax Act to rectify the said omission. It is an admitted fact that the Appellant/Assessee did not claim deduction under Section 43B of the Income Tax Act, 1961 for interest payments to IDBI in the original returns filed by them for the Assessment Years 2003-04 & 2004-05. It is also an admitted fact that the Assessments of the Appellant/Assessee for the assessment years 2003-04 & 2004-05 have been completed based on the computation of income submitted by the Appellant/Assessee along with its returns. The Appellant/Assessee has also not filed revision of Assessment for the

respective Assessment Years under Section 139(5) of the Income Tax Act to rectify the alleged omission to claim deduction for interest payments to IDBI in their original returns filed for the Assessment years 2003-04 & 2004-05.

11. Section 139(5) of the Income Tax Act which deals with revision of Assessment and enables an Assessee to seek revision of Assessment in case of any omission or mistake committed under the original return filed for an Assessment Year. The ledger extract filed by the Appellant/Assessee along with the applications under Section 154 of the Income Tax 1961 seeking rectification of mistake is a self serving statement of account. Though, the payment of interest is disclosed in the statement submitted by the Appellant/Assessee, the same has not been admitted by the respondent/Revenue. Whether interest payments claimed by the Appellant/Assessee is allowable or not is a matter for investigation and there is no element of mistake apparent from the record.

12. Under Section 139(5) of the Income Tax Act, an assessee can file a revised return before the completion of Assessment or within one year from the end of the respective assessment year whichever is earlier. In the case on hand, admittedly assessments have been completed based on the original returns filed for the respective assessment years by the Appellant/Assessee and no revised returns have been filed to rectify the omission to claim deduction for interest payments within the prescribed period. Section 139(5) of the Income Tax Act enables the assessee to file a revised return in case the assessee discovers any omission or any wrong statement under the original returns. The Appellant/Assessee has failed to file revised returns to rectify the alleged omission. As observed earlier, the allowability of interest payments is a debatable issue and it requires further investigation. Therefore, the omission to claim deduction under Section 43B of the Income Tax Act for interest payments in the original returns is not a mistake coming within the purview of section 154 of the Income Tax Act.

13. The Hon'ble Supreme Court had an occasion to consider a similar provision under another taxing statute namely Orissa Sales Tax

Act in the case of ***Master Construction Private Limited vs. State of Orissa*** reported in ***AIR 1966 SC 1047***. Rule 83 of the Orissa Sales Tax Rules (1947) is akin to section 154 of the Income Tax Act.

The material part of Rule 83 of Orissa Sales Tax Rules reads as follows:

> *"The Commissioner of Sales Tax..... may at any time correct any arithmetical or clerical mistakes or any error apparent on the face of the record arising or occurring from accidental slip or omission in an order passed by him, or it."*

Interpreting the above provision, the Hon'ble Supreme Court held as follows:

> *"Rule 83 provides a summary remedy within a narrow compass. The jurisdiction of the Commissioner under this rule is limited and is confined only to the correction of mistakes or omissions mentioned therein. An arithmetical mistake is a mistake of calculation; a clerical mistake is a mistake in writing or typing. An error arising out of or occurring from an accidental slip or omission is an error due to a careless mistake or omission unintentionally made. There is another qualification namely, such an error,shall be apparent on the face of the record, that is to say, it is not an error which*

depends for its discovery, on elaborate arguments on questions of fact or law. The accidental slip or omission is an accidental slip or omission made by the court. The obvious instance is a slip or omission to embody in the order something which the court in fact ordered to be done.. This is sometimes described as a decretal order not being in accordance with the judgment. 'But the slip or omission may be attributed to the Judge himself. He may say something or omit to say something which he did not intend to say or omit. This 'is described as a slip or omission in the judgment itself. The cause for such a slip or omission may be the Judge's inadvertence or the, advocate's mistake. But, however wide the said expressions are construed, they cannot countenance a re-argument on merits on questions of fact or law, or permit a party to raise new arguments which he has not advanced at the first instance."

14. The case on hand does not fall within the above referred parameters laid down by the Hon'ble Supreme Court for rectification of mistake as the mistake alleged by the Appellant/assessee company is not apparent on the face of the record. Further, the assessments for the respective assessment years having been completed and the

Appellant/assesse company having not filed any revised returns to rectify the mistakes committed in the original returns for the respective assessment years, they cannot fall back on section 154 of the Income Tax Act as the said section is meant only to rectify mistakes which is apparent on the face of the record. The case on hand does not fall in the said category as the interest payments are debatable and requires further investigation. It would have never been intention of the legislature to give two options either under section 139(5) or under section 154 for the Assessee to rectify the omission to claim deduction for interest payments. As observed earlier, the objects of section 139(5) and section 154 are different. In case of omission, the only remedy available is under section 139(5) by filing revised returns. Instead in the case on hand, the Appellant/Assessee having failed to file revised returns to rectify the alleged omission has filed applications under section 154 of the Income Tax Act which is meant only to correct mistakes which are apparent from the records and not to cases involving omissions which are debatable and requires further investigation. The ratio decidendi in ***Master Construction Private Limited vs. State of Orissa*** reported in ***AIR 1966 SC 1047*** referred to supra is also applicable to the case on

hand as section 154 of the Income Tax Act is pari materia to Rule 83 of the Orissa Sales Tax Rules. Therefore, only mistakes which are patent, obvious and whose discovery is not dependent on any further investigation can be rectified under section 154 of the Income Tax Act. The case on hand does not fall in the said category for the above mentioned reasons. A Division Bench of this Court had also an occasion to consider the scope of section 154 of the Income Tax Act in the case of ***Commissioner of Income Tax vs. Lakshmi Vilas Bank reported in 2010 329 ITR 0591*** and held that the expression used in section 154 of the Act regarding mistake apparent from the record will have to be construed to be a mistake which is very clear, distinct and apparent. The relevant portion of the aforesaid decision is extracted hereunder:

> *"10.The expression used in s.154 of the IT Act regarding the mistake apparent from the record will have to be construed to be a mistake which is very clear, distinct and apparent. The said mistake should be manifest and could be identified by a mere look and which does not need a long drawn out process of reasoning. It is no doubt true that a mere mistake by itself cannot be a ground to invoke section 154 of the IT Act, 1961. It is also true that an issue which is*

debatable also cannot be decided under section 154. However, when the mistake is glaring and in a case where facts are not in dispute then the said mistake being one apparent on the face of the record will have to be rectified under section 154."

15. The Hon'ble Supreme Court in the case of Anchor Pressings (P) Ltd. vs. Commissioner of Income Tax U.P. and other reported in 1986 3 SCC 439 has also held that omission of relief while making assessment would not amount to "mistake apparent from record" within the meaning section 154 of the Income Tax Act. In that decision, the Assessee claimed relief under section 84 of the Income Tax Act which was rejected by the assessing officer and the Hon'ble Supreme Court held that an application filed under section 154 of the Income Tax Act to rectify the alleged mistake is not maintainable as the omission of the relief while making assessment would not amount to "mistake apparent from record".

16. In the case on hand, the claim for interest deductions under section 43B of the Income Tax Act, which was omitted by the

Appellant/assessee company while filing the original returns can be adjudicated by the assessing officer only through a process of investigation. Even as seen from the computation of income filed along with the rectification applications filed under section 154 of the Income Tax Act, the Assessee has produced a self serving statement of account disclosing interest payments which does not exactly tally with the computation of income filed along with the section 154 applications. Therefore, unless and until a complete investigation is done by the assessing officer, the quantum of deduction for interest payments cannot be ascertained. Hence, the omission claimed by the Appellant/Assessee will not fall under the category of a "mistake apparent from the record". The judgment relied upon by the learned counsel for the Appellant/Assessee in the case of Commissioner of Income Tax vs. Pruthvi Brokers and Shareholders Pvt. Ltd. reported in (2012) 252 CTR 0151 referred to supra will not apply to the case on hand as it was not a decision rendered under Section 154 of the Income Tax Act as its scope falls on a narrow compass involving "mistakes apparent from the record".

17.Circular No.14 (XL-35 1955 dated 11.04.1955) has no bearing to the facts of the present case as the payment of interest to IDBI was never disclosed by the Appellant/Assessee in the income tax returns. Unless and until, the tax returns disclosed interest payments, it is impossible for the assessing officer to assist the Appellant/Assessee to rectify the alleged mistake of omission to claim deduction for interest payments under section 43B of the Income Tax Act.

18. For the foregoing reasons, the concurrent findings of the authorities below does not suffer from any perversity or illegality and the substantial questions of law raised by the Appellant/assessee in these tax case appeals does not deserve any merit and are answered against the Appellant/Assessee and the Tax Case Appeals are dismissed. No costs.

[M.S.N.J] [A.Q.J]

10.03.2020

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Speaking orders
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M.SATHYANARAYANAN, J.
and
ABDUL QUDDHOSE, J.

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