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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/431/2016
IA NO: GA/1/2016 (OLD NO. GA/3668/2016)
SMT. CHETNA JAIN
VS.
COMMISSIONER OF INCOME TAX

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK

Date : 20th July, 2022.

Appearance :-
Mr. Ananda Sen, Adv.
....for appellant.
Mr. Smarajit Roychowdhury, Adv.
...for respondent

The Court : This appeal by the assessee filed under Section 260A of the Income Tax Act, 1961 (the Act for brevity) is directed against the order dated 5th August 2016 passed by the Accountant Member of the Income Tax Appellate Tribunal, Kolkata "C" (SMC) Bench in ITA/222/KOL/2014 for the assessment year 2005-06 (Financial Year 2004-05).

The assessee has raised the following substantial questions of law for consideration:

"Whether the Learned Tribunal erred in law in observing that the issue under consideration regarding giving credit of Tax deduction at source in the year in which income is assessable was debatable when the on the contrary the issue actually

involved application of a provision namely Section 199 of Income Tax Act, 1961 which squarely came within purview of section 154 and hence rectifiable?"

We have heard Mr. Ananda Sen, learned Counsel appearing for the appellant and Mr. Smarajit Roychowdhury, learned standing Counsel for the respondent department.

The short question involved in this case is whether the assessing officer ought to have exercised his powers under Section 154 of the Act pursuant to an application filed by the assessee for rectification of a mistake. In fact, there were two sets of mistakes pointed out by the assessee, one of them being credit for advance tax to the tune of Rs.2,70,000/- and self-assessment tax of Rs.84,373/-. This mistake which was pointed out by the assessee was accepted by the assessing officer. Accordingly, the assessment under Section 143(1) of the Act stood rectified. The second mistake pointed out by the assessee with regard to credit of TDS of Rs.3,61,059/- which was disallowed by processing the return of income for the assessment year under consideration, A.Y. 2005-2006. According to the assessing officer, the credit of TDS related to the assessment year 2004-05 and, therefore, opined that it was rightly disallowed in processing the assessment for the assessment year 2005-06. The assessee carried the matter on appeal before the Commissioner of Income Tax (Appeals), Central 1, Kolkata. The assessee contended that the assessing officer was erred while assessing insurance commission income for the assessment year 2005-06 but not allowed the credit of TDS of Rs.3,61,059/-

deducted thereon, thereby depriving the assessee from getting the benefit of deduction of TDS from the tax payable by her for the assessment year 2005-06. The appellate authority by order dated 18th November, 2013 dismissed the application on the ground that the plea raised by the assessee was beyond the scope of Section 154 of the Act. The assessee filed appeal against the said order before the learned Tribunal. The learned Tribunal was of the view that the issue which was raised by the assessee was a debatable issue as two learned Members of the Tribunal had disagreed warranting reference to the third learned Member and, therefore, such debatable issue cannot be agitated in an application filed under Section 154 of the Act.

Aggrieved by such order, the assessee is before us by way of present appeal suggesting the aforementioned substantial questions of law.

After we have elaborately heard the learned counsel for the parties, we note that the effect of Section 199 of the Act was not considered. Partially, the assessee is to be blamed because such issue was not raised substantially by the assessee. Nevertheless, it being a question of law, the assessee should be permitted to raise such a question. Sub-section (1) of Section 199 states that any deduction made in accordance with the other provisions of Chapter XVII of the Act and paid to the Central Government shall be treated as payment of tax on behalf of the person from whose income the deduction was made and credit shall be given to him for the amount so deducted on production of certificate furnished under Section 203 for the assessment made

under the Act for the assessment year for which such income is assessable. It is not in dispute that the income was assessed for the assessment year 2005-06. If such is the case, the question would be whether the assessing officer could have ignored Section 199 of the Act. If the answer to the said question is in the negative, then the next question would be whether such order of assessment made under Section 143(1) could be rectified by invoking Section 154 of the Act. In *CIT Vs. Sundaram Textiles Ltd. [1984] 149 ITR 525 (Mad.)* while considering the provisions of Section 154 of the Act it was held that the application of a wrong provision of the Act or the erroneous application of the same to the facts of the case which do not call for such application, will amount to a mistake apparent from the record for the purposes of Section 154 of the Act. In the said decision, an earlier decision of the High Court of Mad in *T. Manickavasagam Chettiar V. CIT [1983]* 143 ITR 269 (Mad.) was followed. In *T.S. Balaram ITO V. Volkart Bros. [1971]* 82 ITR 50 (SC), the Hon'ble Supreme Court held that 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 be conceivably two opinions.

The aforementioned decisions were taken note of by the High Court of Madras in the case of *Commissioner of Wealth Tax V. Labh Kavvar Bai; [1999] 236 ITR 872 (Mad.).* The facts of the said case is converse to the facts before us. The revenue had approached the High Court stating that in view of the definite provisions contained in

Section *2(m)(ii)* and Section 5(1)(6)(vi) of the Wealth Tax Act, omission to disallow in the original assessment, the debt owed by the assessee on the life insurance policies, cannot be deducted from the total wealth of the assessee. Therefore, the department contended that when the provisions contained in Sec *2(m)(ii)* of the Wealth Tax Act were not followed in the original assessment order made by the wealth tax officer, there occurred a mistake apparent from the record warranting interference under Section 35 of the Wealth Tax Act, which is *pari materia* to Section 154 of the Income Tax Act. The Hon'ble Division Bench agreed with the contention raised by the department and held that it is not a case where any long drawn process of reasoning was required, on which there may be conceivably two opinions. Therefore, the order passed by the Tribunal in the said case was reversed and the appeal filed by the department was allowed. Had the assessee pointed out with regard to the effect of Section 199 of the Act, the position might have been different and the assessee may not have come to this Court. In any event, since we considered this issue to be a question of law and the effect of Section 199(1) of the Act is required to be examined in the assessee's case, we deem it appropriate that the matter should be remanded to the first Appellate Authority namely, the Commissioner of Income Tax (Appeals), to take a fresh decision in the matter.

For the above reasons the appeal is allowed and the order passed by the learned Tribunal as well as the order passed by the Learned Commissioner of Income Tax (Appeals) dated 18th November, 2013 are

set aside and the matter is restored to the file of the first Appellate Authority who shall consider the submissions of the assessee after affording an opportunity of hearing to the authorized representative of the assessee and take a fresh decision on merits in accordance with law.

Consequently, the substantial question of law is left open.

Accordingly, GA/1/2016 stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

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