M/S. Maharana Mills (Private) Ltd vs The Income-Tax Officer, Porbandar on 14 April, 1959

Equivalent citations: 1959 AIR 881, 1959 SCR SUPL. (2) 547, AIR 1959 SUPREME COURT 881, 1959 36 ITR 350, 1959 SCJ 1125, 1961 BOM LR 1395

Author: J.L. Kapur

Bench: J.L. Kapur, Bhuvneshwar P. Sinha, M. Hidayatullah

PETITIONER:
M/S. MAHARANA MILLS (PRIVATE) LTD.

Vs.

RESPONDENT:
THE INCOME-TAX OFFICER, PORBANDAR

DATE OF JUDGMENT:
14/04/1959

BENCH:
KAPUR, J.L.
BENCH:
KAPUR, J.L.
SINHA, BHUVNESHWAR P.
HIDAYATULLAH, M.

CITATION:
1959 AIR 881 1959 SCR Supl. (2) 547
CITATOR INFO :
R 1961 SC 699 (5)
R 1974 SC1369 (8)
F 1975 SC 910 (10,13,19)

ACT:
Income Tax-Depreciation-Written Down Value-Computation for Prior yeays-Whethey binding for succeeding years-Fresh calculation for written down value by income-tax Officer--Notice to assessee-When essential-Indian Income-tax Act, 1922 (XI Of 1922), SS. 10(2)(vi), 35(1), 63.

HEADNOTE:
Sub-section (1) Of s. 35 of the Indian Income-tax Act, 1922, provided: the Income-tax officer may on his own motion rectify any mistake apparent from the record and shall

rectify any such mistake which has been brought to his notice by an assesses : Provided that no such rectification shall be made, having the effect of enhancing or reducing a
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refund unless..... the Income-tax Officer..... has given notice to the assessee of his. intention so to do and has allowed him a reasonable opportunity of being heard."

The appellant, a private limited company, was assessed to income-tax for the assessment year 1953-54 under the provisions of the Indian Income-tax Act, 1922, and as per the assessment order dated June 30, 1955, the amount of depreciation allowed under s. 10(2)(vi) of the Act was Rs. 3,48,105. On August 8, 1955, the appellant made an application before the Income-tax Officer for rectification of the order under S. 35 of the Act, pointing out certain mistakes in calculation in regard to the depreciation amount. By his order of February 27, 1956, the Income-tax Officer corrected the written down value of the different properties of the appellant and determined the total allowable depreciation to be Rs. 1,94,074. The appellant challenged the order dated February 27, 1956, on the grounds, inter alia, (1) that he was not given a written notice of the intended rectification of the written down value, (2) that the provisions under which the Income-tax Officer acted, i.e., S. 35 of the Act, was not meant for the purpose of making corrections in written down values, the correct provision being s. 34 which specifically refers to excessive depreciation, and (3) that, in any case, he had exceeded his jurisdiction under s. 35 of the Act in calculating the depreciation on the written down value of the buildings and machinery of the appellant acting suo motu, and that he could correct only those mistakes which had been pointed out by it. It was found that notice was given to the appellant of the intended determination of the written down value, though it was not a written notice, and that the matter was discussed with its representative.

Held : (i) that the object of the provision as to notice under s. 35 Of the Indian Income-tax Act, 1922, is that no order should be passed to the detriment of an assessee without affording him an opportunity for being heard and that if, as a matter of fact,the assessee knew of the proceedings and the matter had been discussed with him, an adverse order would not be invalid merely because no written notice was given.

(2) that the word " record " used in the phrase " mistake apparent from the record" in S. 35(I) of the Act refers not only to the order of assessment but 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 S. 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, to make fresh calculations in accordance with the law applicable including the rules made thereunder.
A mistake contemplated by this section is not one which is
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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.
Venkatachalam v. Bombay Dyeing & Mfg. Co., Ltd., [1959] S.C.R. 703, Commissioner of Income-tax v. Khemchand Ramdas, [1938] L.R. 65 I.A. 236 and Sidhramappa Andannappa Manviv. Commissioner of Income-tax, [1951] 2I I.T.R. 333, relied on.

JUDGMENT:

CIVIL APPELATE JURISDICTION: Civil Appeal No. 39 of 1959. Appeal by special leave from the judgment and order dated November 26, 1957, of the Bombay High Court at Rajkot in Special Civil Application No. 119 of 1956.

A. V. Viswanatha Sastri, S. P. Mehta, J. B. Dadachanji, S. N. Andley and Rameshwar Nath, for the appellants. M. C. Setalvad, Attorney-General for India, R. Ganapathy Iyer and D. Gupta, for the respondent.

1959. April 14. The Judgment of the Court was delivered by KAPUR, J.-This is an appeal by special leave against the judgment and order of the High Court of Judicature at Bombay dismissing the appellant's petition under Art. 226. The appellant before us is a private limited company carrying on the business of manufacturing and selling textiles and the respondent is the Income-tax Officer of Porbander. Previous to the year 1949, in Porbander which became a part of the State of Saurashtra, there was no income-tax. In 1949 the Saurashtra Income-tax Ordinance (hereinafter termed the Ordinance) was promulgated which was applicable to the State of Saurashtra. By that Ordinance income-tax became leviable and from 1950 onwards when Saurashtra became part of the Union of India the Indian Income-tax Act (hereinafter referred to as the Act) became applicable by reason of the Finance Act of 1950 (Act XXV of 1950).

The appellant 'Was taxed for the accounting year 1949, i.e., the assessment year 1950-51. In that year the amount of depreciation allowed under s. 10(2)(vi) of the Act was Rs. 3,43,869. The appellant continued to be assessed to income- tax in the assessment years 1952-53 and 1953-54 and the present appeal relates to the assessment of year 1953-54. According to the assessment order dated June 30, 1965, the amount of depreciation allowed for the assessment year 1953- 54 was Rs. 3,48,105. On August 8, 1955, the appellant made an application for rectification under s. 35 of the Act. In this application he pointed out several mistakes in calculations in regard to the depreciation amount. By his order of February 27, 1956, the Income-tax Officer corrected the Written Down

Value of the different properties of the appellant and determined the total allowable depreciation to be Rs. 1,94,074. The order of the Income-tax Officer was as follows:

> " To arrive at the Written Down Value of the assets it was necessary to maintain depreciation record. This being not done so far, is done now and working attached. Depreciation allowance as per rules is worked out at Rs. 1,94,074 as per working sheet attached.
>
> The correct computation of income is as under:-
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> Income before allowing depreciation as per original assessment order:Rs.1,00,674 Less charity disallowed wrongly written Rs. 21,889 instead of Rs. 20,124: Rs.1,765 Income Rs.98,909 Less depreciation Rs.1,94,074 Rs.95,165 Less Dividend income as per origi-
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> nal assessment order: Rs.11,870 Loss. Rs.83,295 Loss on account of depreciation to be carried forward. Declared N. A. "

And thus the unabsorbed depreciation amount which under the assessment order of June 30, 1955, was Rs. 2,31,944 was reduced to Rs. 83.,295 and this was set off against the appellant's income of the assessment year 1954-55. On February 29, 1956, the Income-tax Officer passed two provisional assessment(orders for the years 1954-55 and 1955-56. In both these orders he calculated the depreciation amounts on the basis of the same Written Down Value as he had determined for the year 1953-54. The reasons for calculating them on the new basis were set out by the Income-tax Officer in his order dated May 18, 1956, and they were:-

> " Less Depreciation. The depreciation of the Company has not been properly calculated by arriving at, Written Down Value as per the Saurashtra Income Tax Ordinance and also as per Indian Income-tax Act. The assessee Company was being assessed regularly even as per Indian Income-tax Act. So Written Down Value of all assets are arrived at by working out the depreciation as per above Ordinance as well as Income Tax Act. The depreciation is worked out as per separate statement keeping in view the following:
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> (i) Definition of " assessee " as per Indian Income-tax Act.
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> (ii) The exact meaning of W.D. V. as per Income-tax Act.
>
> (iii) The meaning of W. D. V. as per the Saurashtra Income-tax Ordinance, 1949 and Rules (Page 20, para. 13-5- A).
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> (iv) 1. T. R. Volume 25, 558. Decision of Calcutta High Court as regards C. I. T., West Bengal,M/s. Karnani Industrial Bank Ltd.

(v) Views expressed by Taxation Enquiry Commissioner, 1953- 54, Volume II, page 84, para. 34.

(vi) Taxation Laws (Part 'B' State) (Removal of Difficulties Order, 1950.

The depreciation thus worked out as per separate statement". On August 8,1955,the appllant made an application under s. 35 for certain corrections in the calculations and the order thereon was passed on February 27, 1956, but no written notice of the intended rectifi- cation of the Written Down Value and the depreciation amount was given by the Income-tax Officer to the appellant under s, 35 read with s. 63 of the Act. On March 9, 1956, the appellant wrote to the Income-tax Officer protesting against the order:-

" You have exercised powers not vested in you under the said Section, and you have gone beyond the purview of the Act by preparing statements and records which are prejudicial to the rights of the Company ".

The appellant requested the Income-tax Officer to cancel his previous order and to pass a fresh order correcting onlv those mistakes which had been pointed out by it' On the same day the appellant sent another letter asking for the cancellation of the provisional assessment order for 1954-55 and requested for a revised assessment order on the basis of the return filed by it. The reply of the Income-tax Officer of the same date was that the order was correct and a similar order was made on the second application in regard to the assessment of 1954-55.

On April 16, 1956, the appellant filed a petition in the High Court of Bombay under Arts. 226 and 227 in which it alleged that the Income-tax Officer had:

" exceeded the limits of jurisdiction vested in him and exercised illegally jurisdiction not vested in him by law under Section 35 and passed orders, inter alia, and suo motu and without giving any prior notice and altered the entire procedure and basis of calculating depreciation on the written down value of buildings and machinery of the petitioners The appellant prayed that the order made under s. 35 of the Act be quashed and an injunction issued restraining the Income-tax Officer from recovering the assessed tax. The High Court dismissed this petition on the ground that it contained misstatements of fact ; that " The advantage of this jurisdiction is not available to the subject when adequate and efficacious remedy is available to him under the ordinary law " ; that the appellant could, under s. 33A of the Act, have gone in revision to the Commissioner. The High Court also held against the appellant on merits. The appellant has come to this Court by special leave and three questions were raised (1) that no notice as required under s. 35 was given to the appellant; (2) that there was no record on the basis of which the rectifica. tion in the Written Down Value of the property could be made and (3) that there was no mistake apparent from the record.

> The learned Attorney-General contended in the first instance that the remedy available under Art. 226 is a discretionary one and if the High Court had exercised its discretion no appeal was competent and in support of his contention he relied upon the judgment of this Court in K. S. Rashid & Son v. Income-tax Investigation Commission, etc. (1), where Mukherjee, J., (as he then was) said:-
>
> For purpose of this case it is enough to state that the remedy provided for in Art. 226 of the Constitution is a discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere ".

It is not necessary to decide in this case whether the order passed under Art. 226 is of a discretionary nature and therefore in appeal this Court would not interfere with the exercise of discretion, because in our opinion, the case can be decided on other grounds of substance.

The first question is that of notice under s. 35 of the Act. The affidavit of the Income-tax Officer shows that the correctness of the figures for determining the depreciation was discussed with the appellant's Secretary. The Income- tax Officer stated that:

> " The depreciation which was calculated in the assessment order of 1953-54 was as per the statement given by the petitioner. On submission of the said application the petitioner (Shri Ganatra, the Secretary of the Mills) was told that the depreciation will be given after rectifying mistakes. The petitioner had (1) (1954) S.C.R. 738, 747.

agreed to the same. There being no record of the working out from the first available record in the Assessment order for the Assessment year 1943-44, the petitioner was also supplied with the copy of the working of the depreciation along with the necessary rules and regulation for calculating the same ".

He also stated that the order of rectification was passed "almost at the end of the financial year, after explaining and discussing all the above calculation along with the relevant rules and regulation of the calculated depreciation " ; that the order was not passed without giving a reasonable opportunity to the appellant; that the matter was discussed with its representative more than once; thattheassessment for the year 1954-55 was made final after calculatitig the depreciation; that the point of depreciation was notraised by the applicantat any hearingand that even though no written notice was given, the represen- tative of the appellant was given notice of the intended determination of the Written Down Values. He also stated :

> " Thus though no written notice is given, applicant is given notice of the intention of calculating depreciation on record basis and is also allowed a reasonable opportunity of being heard inasmuch as he was given the calculation of depreciation on 21-2-1956 ".

The orders placed on the record show that the Income-tax Officer made calculation for the purpose of determining the depreciation amount and after giving deductions allowed by the Act and the Rules made thereunder arrived at the corrected figure of Rs. 1,94,074 for the assessment year 1953-54.

Apart from the fact that the petition of the appellant does not set out clearly all the facts which should have been set out, there is the affidavit of the respondent that the matter was discussed with the representative of the appellant although no written notice was given. In this connection the learned Attorney-General has further submitted (1) that the order determining the depreciation amount allowable was not final;

(2) that the effect of the order making the rectification was not of enhancing the assessment or reducing the refund; and (3) that the question of depreciation could be raised at the time of assessment in any subsequent year. The object of the provision as to notice in s. 35 is that no order should be passed to the detriment of an assessee without affording him an opportunity but it cannot be said that the Rule is so rigid that if, as a matter of fact, the assessee knows of the proceedings and the matter has been discussed with him then an adverse order would be invalid merely because no notice under s. 63 was given. Of course this postulates that a reasonable opportunity has been given to show cause. Secondly this provision is applicable only where the assessment is enhanced or-refund is reduced. Neither of those contingencies has arisen in the present case.

The depreciation allowed to the appellant in the year of assessment 1943-44 when the appellant was assessed as a non- resident, was Rs. 1,91,224. In the year 1944-45 there was no asssessable income in British India and so also in 1945-

46. In the year 1946-47 there was a loss. In the year 1947-48 as in the preceding years the sales were effected at Porbander and there was no collection made in British India. The total tax due was calculated at Rs. 43-11As. In 1948-49 the sales were Rs. 38,656 and they were assessed to income-tax on a total income of Rs. 9,326. For the accounting year 1948, i.e., the assessment year 1949-50 when the Ordinance came into force the total depreciation amount allowed was Rs. 3,66,925 which was much more than what was allowable on the Written Down Values determined in accordance with the provisions of the Ordinance which defined Written Down Value:

> Written Down Value means-
>
> (a) In the case of assets acquired in the previous year, the actual cost to the assessee;
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> (b) In the case of assets acquired before the previous year the actual cost to the assessee less all depreciation actually allowed to him under this Ordinance or allowed under any Act repealed hereby or which would have been allowed to him if the Indian Income-

tax Act, 1922, was in force in past ".

On the basis of this Ordinance and the other Statutes and Rules mentioned in his affidavit, which have been set out above, the Income-tax Officer-made the various calculations and determined the depreciation amounts which have given rise to the controversy before us. These calculations were based on the Written Down Values for the successive assessment years up to the year of assessment 1953-54. But it was argued by counsel for the appellant that according to s. 10(5)(b) of the Act the Written Down Value in the case of assets acquired before the previous year mean the actual cost to the assessee less all depreciation actually allowed to him under the Act or under any Act repealed thereby and therefore the provisions of the Saurashtra Ordinance which came to an end when the Act became applicable cannot form the basis of determining the Written Down Value for the purposes of assessment of the years 1950-51 onwards. In reply it was submitted that the Written Down Values were calculated and depreciation deter- mined for the year 1943-44 and should in subsequent years have been calculated in accordance with the provisions of the Ordinance and they could not become higher for purposes of s. 10(5)(b) of the Act merely because the Ordinance was replaced by the Act. In this connection reference was made to s. 12 of the Finance Act, 1950, s. 12 of which empowered the Central Government to make provision for the removal of difficulties in giving effect to the provisions of any of the Acts, Rules or Orders extended by s. 3 or s. 11 of that Act, i. e., Finance Act, 1950. Under that section (s. 12) the Taxation Laws (Part B States) Removal of Difficulties Order, 1950, was promulgated on December 2, 1950, and by cl. 2 of this Order provision was made for computation of aggregate depreciation allowance and Written Down Values. To this Order the following explanation was added on March 9, 1953: (Notification No. S. R. 0. 477):-

> " For the purposes of this paragraph, the expression " all depreciation actually allowed under any laws or rules of a Part B State " means and shall be deemed to have always meant the aggregate allowance for depreciation taken into account in computing the Written Down Value under any laws or rules of a Part B State or carried forward under the said laws or rules. But the appellant's counsel contended that this explanation is ultra vires because it was promulgated under s. 60-A of the Act and that section was inapplicable to the Order made under s. 12 of the Finance Act, 1950. He relied on two cases decided by the Hyderabad High Court in S. V. Naik v. Commissioner of Income-tax (1) and Commissioner of Income- tax v. D. B. R. Mills Ltd. (2) but we are informed that one of those judgments is under appeal to this Court and we therefore do not wish to express any opinion upon the cor- rectness or otherwise of this contention raised by the appellant.
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> It was next argued by the learned Attorney-General that the Written Down Values determined under S. 35 are not final and can be redetermined in the following assessment years and in support he referred to Karnani Industrial Bank v. Commissioner of Income-tax (3) where the original cost of the machinery purchased]Rs. 3,40,000-was accepted in the successive assessment years till it was doubted in the assessment order 1946-47 and was determined at Rs. 2,80,000 and it was contended that the Income-tax Officer had to take the Written Down Value of the previous year as correct. Thus the question there raised was whether the Income-tax Officer was entitled in law to go behind the original cost accepted by his predecessor ever since the assessment year 1939-40. It was held that neither the principle of res

> judicata nor estoppel nor the terms of s. 10 (2) (vi) of the Act prevented the Income-tax Officer from determining. for himself' what the actual cost of the machinery had been and that depreciation had to be calculated for every year and it was open to the Income-tax Officer not merely to perform " a mathematical operation on (1) [1955] 29 I.T.R. 206. (2) [1954] 29 I.T.R. 210, (3) [1951] 25 I.T.R. 558.

the basis of the Written Down Value of the previous year, but one of determining the Written Down Value himself ". The limit to which the Income-tax Officer can go back does not stop at the Written Down Value of the previous year but extends up to the figure of the original cost, and the method enjoined by s. 10(5)(b) is not that the Income-tax Officer should merely scale down the Written Down Value of the previous year, but that he should take into consideration the actual cost, determining it for himself, if necessary, take also into consideration the allowances granted in the past and then make his own-computation as to the Written Down Value for the assessment year with which be is concerned. Thus it cannot be said that merely because under s. 35 some Written Down Value and the depreciation amount have been determined they are a final determination binding for all times to come nor does the determination operate as estoppel or resjudicata for the following years. Therefore it cannot be said that there is no other efficacious and adequate remedy open to the appellant to challenge the depreciation amount determined under s. 35. Counsel for the appellant contended that the provision under which the Income-tax Officer acted, i. e., 35 was not meant for the purpose of making corrections in Written Down Values; and that for the purpose the appropriate and correct provision was s. 34 which specifically refers to excessive depreciation. There are two sections under which an Income- tax Officer can act, i. e., ss. 34 and 35 and the question for decision that arises is whether s. 35 was open to him. Section 35 provides:

> " 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 the 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 but 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 s. 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 Privy Council in Commissioner of Income-tax v. Khem Chand Ramdas(1) held s. 35 to be applicable where the facts were that the assessee did not produce books of account and an

assessment was made by the Income-tax Officer to the best of his judgment. An application for the registration of the firm was however allowed and it was registered on January 17, 1927. On the same day assessment was made under s. 23(4). As it was a registered firm no super-tax was assessed. The Commissioner called for the record under s. 33 and cancelled the registration on January 28, and ordered the Income-tax Officer to take necessary con\sequential action. The result of that was that the assessee became liable to super-tax. Consequently an order for super-tax was made on May 4, 1929, and three days later notice of demand was issued. The Privy Council held that as the fresh action taken by the Income-tax Officer was hopelessly out of time the demand for super-tax was illegal because after the final assessment the Income-tax Officer could not go on making fresh computations and issuing fresh notices of demand to the end of all time but it was held that (1) (1938) L. R. 65 I.A. 236.

the provisions of ss. 34 and 35 prescribed the only circumstances in which fresh assessment could be made and fresh notice of demand could be issued. At p. 426 Lord Romer observed:

> " In the present case it is a debatable question r whether the circumstances were such as to bring it within the provisions of Section 34. It is not necessary to determine that question inasmuch, as, in. their lordship's opinion, the case clearly would have fallen within the provisions of section 35 had the Income-tax Officer exercised his powers under the section within one year from the date on which the earlier demand was served upon the respondents. For, looking at the record of the assessments made upon them as it stood after the cancellation of the respondent's registration and the order affecting the cancellation would have formed part of that record-it would be apparent that a mistake had been made in stating that no super-tax was leviable ".

Thus the order effecting the cancellation of the regis- tration of the assessee's firm was considered to have formed part of the record of the case.

In Sidhramappa Andannappa Manvi v. Commis. sioner of Income- tax (1) the facts were that a debt belonging to a joint family fell on partition to the share of the assessee. This debt was held not to be recoverable by a judgment of the Bombay High Court dated September 29, 1941. Holding it to be within the accounting year the Appellate Tribunal allowed this sum to be taken into consideration for the purpose of the accounting year. It subsequently corrected the error. It was held that under s. 35 the Tribunal was entitled to rectify the mistake and was competent to pass a consequential order dismissing the appeal instead of allowing it.

The power under s. 35 is no 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 (I) [1951] 2I I.T.R. 333.

(2) S.C.R. SUPREME COURT REPORTS 561 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. The scope and effect of

the expression "mistake apparent from the record " and the extent of the powers of the Income-tax Officer under s. 35 of the Act were discussed by this Court in M. K. Venkatachalam v. Bombay Dyeing and Manufacturing Co. Ltd. (1) where the facts were these: A sum of Rs. 50,063 being interest on tax paid in advance was given credit for under s. 18A(5) of the Act. Subsequently there was an amendment of the Act by which the interest became allowable only on the difference between the amount of tax paid and what was actually determined. As a consequence of this the Income-tax Officer purporting to act under s. 35 of the Act rectified the mistake and reduced the amount of interest credited to Rs. 21,157 and issued a demand for the difference. The assessee obtained a writ of prohibition against the Income-tax Officer on the ground that the mistake contemplated under that provision had to be apparent on the face of the Order and it was not contemplated to cover a mistake resulting from an amendment of the law even though it was retrospective in its effect. The Revenue appealed to this Court. Thus the question for decision in that case was whether ail order proper and valid when made could be said to disclose a mistake apparent from the record merely because it became erroneous as a result of a subsequent amendment of the law which was retrospective in its operation. In delivering the judgment of the Court Gajendragadkar, J., said:-

> " At the time when the Income-tax Officer applied his mind to the question of rectifying the alleged mistake, there can be no doubt that he had to read the principal Act as containing the inserted proviso as from April 1, 1952. If that be the true position then the order which he made, giving credit to the (1) [1959] S.C.R. 703.

7I respondent for Rs. 50,603-15-0 is plainly and obviously inconsistent with a specific and clear provision of the statute and that must inevitably be treated as a mistake of law apparent from the record. If a mistake of fact apparent from the record of the assessment order can be rectified under s. 35 we see no reason why a mistake of law which is glaring and obvious cannot be similarly rectified ". The decision of the Privy Council in Commissioner of Income- tax v. Khem Chand Ram Chand (1) was referred,to. Counsel for the appellant sought to distinguish both these cases; Venkatachalam's case (2) and Khem Chand's case(1) on the ground that the record there considered was the assessment record of that year and the Income-tax Officer did not have to go to the records of the previous year. That is a distinction without a difference. If, for instance, the Income. tax Officer had found that in the assessment year 1952-53 there was an apparent arithmetical mistake in the account of the Written Down Value of the pro. parties which resulted in a corresponding mistake in the assessment of the year in controversy could he not take the corrected figure for the purposes of the assessment and could it be said that the mistake was not apparent from the record. A fortiori if lie discovered that the very basis of the different assessments was erroneous because of an initial mistake in determining the Written Down Value could it be said that this would not be a mistake apparent from the record. And if in order to determine the correct Written Down Value the Income-tax Officer makes correct calculations, can it be said that is not rectifying a mistake apparent from the record but is dehors it. In our opinion this appeal is without force and we would therefore dismiss it with costs.

Appeal dismissed.

(1) (1938) L.R. 65.1.A. 236. (2) [1959] S.C.R. 703.