Commissioner Of Income Tax, Bhopal vs Ralson Industries Ltd on 4 January, 2007

Equivalent citations: AIR 2007 SUPREME COURT 668, 2007 AIR SCW 275, 2007 TAX. L. R. 156, (2007) 52 ALLINDCAS 262 (SC), 2007 (1) SCALE 44, 2007 (2) SCC 326, (2007) 1 SCALE 44, (2007) 198 TAXATION 97, (2007) 288 ITR 322, (2007) 1 SUPREME 65

Author: S.B. Sinha

Bench: S.B. Sinha, Markandey Katju

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           CASE NO.:
Appeal (civil)  10 of 2007

PETITIONER:
Commissioner of Income Tax, Bhopal

RESPONDENT:
Ralson Industries Ltd

DATE OF JUDGMENT: 04/01/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
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J U D G M E N T [Arising out of SLP (CIVIL) NO. 17352 OF 2004] S.B. SINHA, J.

Leave granted.

Interpretation of the provisions of Section 154 vis-`-vis 263 of the Income Tax Act calls for consideration in this Appeal which arises out of a Judgment and Order dated 15th December, 2003 passed by the High Court of Madhya Pradesh at Jabalpur in ITR No.19/1999. The fact of the matter is not much in dispute. The Respondent is an assessee under the Income Tax Act. It filed its return for the assessment year 1992-93 declaring its income at Rs.26,66,355/-. The order of assessment was completed on or about 10.3.1995 under Section 143(3) of the Act opining that the assessable income as against the assessee was Rs.35,40,414/-. The Commissioner of Income Tax invoked its jurisdiction under Section 263 of the Act by setting aside the order of assessment excluding certain amounts towards transport receipts to the extent of a sum of Rs.2762982/- and interest amounting to Rs.141878/- from the assessee's total income in the light of the provisions of Section 80HHC and Section 80-I of the Act. The Assessing Officer was directed to make a fresh order of assessment.

Appeal was preferred thereagainst by the assessee before the Income Tax Appellate Tribunal. It was, inter alia, contended that after the order of assessment under Section 143 (3) of the Act was passed, a Notice of Rectification of the Order of Assessment under Section 154 thereof having been issued by the Assessing Officer on 26.10.1995, wherein no modification/amendment was made in regard to the purported exclusion of income under Sections 80HH and 80-I of the Act on account of non-inclusion of transport receipts and interest on the total income and, thus, the Commissioner of Income Tax has no authority to initiate any proceedings under Section 263 thereof or otherwise.

The said contention of the assessee was upheld by the Tribunal, inter alia, relying on or on the basis of a decision of the Madhya Pradesh High Court in Commissioner of Income-tax v. Vippy Solvex Products Pvt. Ltd. reported in (1997) 228 ITR 587. The Tribunal was furthermore of the opinion that the Order passed under Section 154 of the Act having been made upon due consideration of the explanation of the assessee for the proposed rectification on the point of excess deduction under Section 80HH and 80-I, the Commissioner lacked jurisdiction to make may order under Section 263 thereof.

An application in the aforementioned premise was filed before the High Court for a direction upon the Tribunal for reference of the following questions to it for its opinion: -

> "1. Whether on the facts and in the circumstance of the case, the Hon'ble ITAT was justified in law in holding that the CIT lacked jurisdiction to revise the order of assessment u/s 263 of the I.T. Act?
>
> 2. Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was Justified in holding that the issue of excess deduction u/s 80HH & 80 I contained in the order u/s 143 (3) was merged with the order u/s 154 particularly when no rectification u/s 154 was made in this regard.
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> 3. Whether the view taken by the Hon'ble ITAT that the AO did not consider the issue of excess deductions u/s 80HH and 80 I for rectification in his order u/s 154 after due application of his mind, could in law justify its conclusion that there was no jurisdiction u/s 263 in respect of the said issue in terms of the assessment order dated 10-03-95."

Relying on a decision of the High Court in Chunnilal Onkarmal Pvt. Ltd. v. Commissioner of Income Tax reported in 1997 ITR (224) 233, the High Court opined that no substantial question of law arises for directing Tribunal to refer any question to the said Court.

Sub-sections (1) and (6) of Section 154 and Sub-section (1) of Section 263 of the Act reads as under: -

> "154. (1) With a view to rectifying any mistake apparent from the record an income-tax authority referred to in section 116 may,-

(a) amend any order passed by it under the provisions of this Act;

(b) amend any intimation or deemed intimation under sub-section (1) of section 143. *** *** *** (6) Where any such amendment has the effect of enhancing the assessment or reducing a refund already made, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 156 and the provisions of this Act shall apply accordingly.

"263. (1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment "

The scope and ambit of a proceeding for rectification of an order under Section 154 and a proceeding for revision under Section 263 are distinct and different. Order of rectification can be passed on certain contingencies. It does not confer a power of review. If an order of assessment is rectified by Assessing Officer in terms of Section 154 of the Act, the same itself may be a subject matter of a proceeding under Section 263 of the Act. The power of revision under Section 263 is exercised by a higher authority. It is a special provision. The revisional jurisdiction is vested in the Commissioner. An order thereunder can be passed if it is found that the order of assessment is prejudicial to the Revenue. In such a proceeding, he may not only pass an appropriate order in exercise of the said jurisdiction but in order to enable him to do it, he may make such inquiry as he deems necessary in this behalf.

When an order is passed by a higher authority, the lower authority is bound thereby keeping in view the principles of judicial discipline. This aspect of the matter has been highlighted by this Court in Bhopal Sugar Industries v. Income Tax Officer, Bhopal [AIR 1961 SC 182] in the following terms:

" If a subordinate tribunal refuses to carry out directions given to it by a superior tribunal in the exercise of its appellate powers, the result will be chaos in the administration of justice and we have indeed found it very difficult to appreciate the process of reasoning by which the learned Judicial Commissioner while roundly condemning the respondent for refusing to carry out the directions of the superior tribunal, yet held that no manifest injustice resulted from such refusal. It must be remembered that the order of the Tribunal dated April 22, 1954, was not under challenge before the Judicial Commissioner. That order had become final and binding on the parties, and the respondent could not question it in any way. As a matter of fact the Commissioner of Income-tax had made an application for a reference, which application was subsequently withdrawn. The Judicial Commissioner was not sitting in appeal over the Tribunal and we do not think that, in

> the circumstances of this case, it was open to him to say that the order of the Tribunal was wrong and, therefore there was no injustice in disregarding that order. As we have said earlier such a view is destructive of one of the basic principles of the administration of justice."

This principle has been laid down also in Dharam Chand Jain v. The State of Bihar [AIR 1976 SC 1433] stating :

> " The State Government, being a subordinate authority in the matter of grant of mining lease, was obligated under the law to carry out the orders of the Central Government as indicated above. But the State Government declined to do so on the ground that it had laid down a policy that the mining leases in respect of the area should be given only to those who were prepared to set up a cement factory. It was clearly not open to the State Government to decline to carry out the orders of the Central Government on this ground, particularly because the Central Government was a tribunal superior to the State Government..."

In Morgan Securities and Credit Pvt. Ltd. v. Modi Rubber Ltd. [2006 (14) SCALE 267], this Court opined:

> "While exercising its power under sub-section (3) of Section 22, the Board cannot ignore an order passed by a superior court. It may be bound by the doctrine of judicial discipline."

When different jurisdictions are conferred upon different authorities to be exercised on different conditions, both may not be held to be overlapping with each other. Jurisdiction under Section 154 of the Act is only to be exercised by him when there is an error apparent on the face of the record. It does not confer any power of review. An order of assessment may or may not be rectified. If an order of rectification is passed by the Assessing Authority, the rectified order shall be given effect to. However, only because an order of assessment has undergone rectification at the hands of the Assessing Officer, in our opinion, the same would not mean that revisional authority shall be denuded of exercising its revisional jurisdiction. Such an interpretation, in our opinion, would run counter to the scheme of the Act.

The Tribunal relied on Vippy Solvex Products Pvt. Ltd. (supra). Therein the question was determined in the light of the decision of this court in S.R.Venkataraman v. Union of India [AIR 1979 SC 49]. Ratio of the said decision was not at all applicable. The High court, thus, committed a manifest error in relying on the said decision. In S.R. Venkataraman (supra) this court was concerned with an administrative order passed by a statutory authority. It is trite that when an authority having discretionary power exercises the same for unauthorized purpose or on consideration of irrelevant facts, the same must be held to be bad in law, but the said principle of judicial review could not have been applied. Such a principle cannot be applied in a case of this nature where an authority exercises judicial or quasi-judicial function. It is a statutory power. Power of review and/or rectification is not akin to an administrative power. An administrative function and

judicial function operate in two different places. Whereas a judicial function must be exercised by the authority invested therewith in terms of the provisions of the statute and on the basis of the materials on record; an administrative order may although inter alia have to be passed by a statutory authority but the same must be confirmed within the four corners of the statute. There may, however, have an element of discretion. Order by a judicial functionary is subject to appeal or revision. An administrative order may or may not be.

An order of assessment is subject to exercise of an order of a revisional jurisdiction under Section 263 of the Act. Doctrine of Merger in such a case will have no application.

The decision of the Madhya Pradesh High Court in Chunnilal Onkarmal (supra) is also not apposite. Initiation of a proceeding under Section 263 of the Act cannot be held to have become bad in law only because an order of rectification was passed. No such hard and fast rule can, in our opinion, be laid down. Each case is required to be considered on its own facts. In a given situation, the High Court may be held to be entitled to set aside both orders and remit the matter for consideration of the matter afresh. But in our opinion, it would not be correct to contend that only because a proceeding for rectification was initiated subsequently, the revisional jurisdiction could not have been invoked under any circumstances whatsoever. If such a proceeding was initiated, in our opinion, the contesting parties could bring the same to the notice of the Commissioner so as to enable him to take into consideration the subsequent events also. It goes without saying that if and when the Commissioner of Income Tax takes up for consideration a subsequent event, the assessee would be entitled to make its submission also in regard thereto.

For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. Our attention has been drawn to the fact that Assessing Officer had allegedly taken into consideration the application of Sections 80 HHC and 80-I of the Act. In our opinion, therefore, interest of justice would be met if the Commissioner of Income Tax is directed to have a fresh look at the matter in the light of the order of rectification passed by the assessing authority.

This appeal is allowed with the aforementioned direction. In view of the facts and circumstances of this case, there shall be no order as to costs.