Commissioner Of Income Tax, Jabalpur vs Keshri Metal Pvt. Ltd., Raipur on 18 March, 1999

Equivalent citations: AIR1999SC3801, [1999]237ITR165(SC), JT1999(3)SC45, (1999)9SCC165, AIR 1999 SUPREME COURT 3801, 1999 (9) SCC 165, 1999 AIR SCW 3868, 1999 TAX. L. R. 1064, (1999) 3 JT 45 (SC), (1999) 104 TAXMAN 360, (1999) 150 TAXATION 701, (1999) 237 ITR 165, (1999) 9 SUPREME 110, (1999) 155 CURTAXREP 531

Bench: S.P. Bharucha, R.C. Lahoti

ORDER

1. The High Court answered in the affirmative and against the Revenue the following question:

> Whether on the facts and in the circumstances of the case the Tribunal was justified in upholding the finding of the learned C.I.T. (A) who cancelled the order of the Assessing Officer passed on 18-6-1991 under Section 154 of the Income-tax Act, 1961?

2. The Revenue is in appeal. The order of assessment was made on 30th March, 1990. It was then rectified under Section 154 of the Income-tax Act, 1961 because the assessing officer found that depreciation under the Companies Act had been allowed at Rs. 11,53,374/- whereas it was actually allowable at Rs. 11,38,057/-. He also found that unabsorbed depreciation had been taken at Rs. 12,00,368/- as against unabsorbed loss of Rs. 17,230/-. He was of opinion that there was a mistake apparent from the record and he made the rectification after giving to the assessee the opportunity of being heard.

3. In appeal, the Commissioner of Income-tax (Appeals) cancelled the order under Section 154. He noted that the mistake to be rectified had to be apparent from the record; it had to be an obvious mistake and not something on which there might conceivably be two points of view. The Income-tax Appellate Tribunal confirmed the view taken by the Commissioner (Appeals).

4. On the application of the Revenue, the Tribunal referred the question aforementioned to the High Court and it drew up a statement of case.

5. The High Court answered the reference, as aforestated, in favour of the assessee, holding that the Tribunal and the Commissioner of Appeals were justified in taking the view that no occasion for rectification arose. It also opined that these were questions of fact and no question of law arose.

6. We have heard learned Counsel. We do not agree that the question raises a pure question of fact; to that extent, the High Court was in error. But it was not in error in coming to the conclusion that there was no occasion for rectification. Under the provisions of Section 154 there has to be a mistake

apparent from the record. In other words, a look at the record must show there has been an error, and that error may be rectified. Learned counsel for the revenue has not been able to satisfy us that it shows any apparent error upon the record. Reference to document outside the record and the law impermissible when applying the provision of section 154.

7. The appeal is dismissed. No order as to costs.