Smt. Geeta Bindal vs Income Tax Officer on 29 January, 2024

Author: Yashwant Varma

Bench: Yashwant Varma, Purushaindra Kumar Kaurav

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
\+ W.P.(C) 3757/2019
SMT. GEETA BINDAL
Through:

versus

INCOME TAX OFFICER
Through:

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV
ORDER

% 29.01.2024

1. This petition under Article 226 and 227 of the Constitution of India is directed against the order dated 24 January 2018, whereby, an application under Section 154 of the Income Tax Act, 1961 ['Act'] came to be rejected by the Income Tax Officer ['ITO'] primarily on the ground that the nature of rectification sought for is not covered within the scope of Section 154 of the Act. The petitioner, therefore, prays for consequential reliefs including directions to the respondent for refund of Tax Deducted at Source ['TDS'] credit.

2. Learned counsel for the petitioner, during the course of arguments, confines his prayer to the extent of directions to the concerned authority to consider his rectification application in view of the provisions under Section 57(iv) read with Section 56(2)(viii) and This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 05/02/2024 at 20:31:23 Section 145(A)(b) of the Act, before the passage of Finance Act, 2018 w.r.e.f. 01 April 2017.

3. Learned counsel for the petitioner further submits that despite the claim being laid down in the income tax return ['ITR'] of the Assessment Year ['AY'] 2013-2014 to the extent of TDS credit of Rs.3,68,152/-, the benefit of the same has not been extended to the petitioner. According to him, when the aforesaid errors were noticed by the petitioner, she immediately moved an application

under Section 154 of the Act on 18 May 2015 before the competent authority, which remained undecided. He contends that a subsequent application dated 24 November 2017 preferred by the petitioner, however, has been rejected arbitrarily and illegally dehors the settled principles of law.

4. The submissions made by learned counsel for the petitioner are vehemently opposed by the learned counsel appearing on behalf of the respondent and it is submitted that the nature of rectification sought for, clearly does not fall within the scope and ambit of Section 154 of the Act. According to him, any mistake apparent from the record is rectifiable and on the pretext of rectification application, an assessee cannot call upon the authority to exercise review jurisdiction.

5. We have heard learned counsel for the parties and perused the record.

6. The facts of the case exhibit that the husband of the petitioner died in a car accident on 13 April 2001. In a claim petition filed by the petitioner and other dependents of her deceased husband, Motor Accident Claims Tribunal ['MACT'] awarded compensation of Rs.18,30,200/- which came to be enhanced by this Court in an appeal to the extent of Rs.22,01,912/- along with interest at the rate of 9% per annum from the date of filing of the claim petition.

7. On 16 January 2013, National Insurance Company Limited ['NICL'] quantified the total amount payable against the claim at Rs.39,92,671/- and paid it to the petitioner. TDS on interest amount i.e., Rs.3,68,152/- was credited to the petitioner's account.

8. Despite being eligible as per the mandate of Section 57(iv) of the Act, the petitioner omitted to claim half the interest amount as exempted in her ITR for AY 2013-2014. However, she duly claimed TDS credit of Rs,3,68,152/- which was not acceded to. The petitioner, therefore, invoked provisions under Section 154 of the Act and filed a rectification application dated 18 May 2015 claiming for both the reliefs.

9. The record would indicate that an application dated 18 May 2015 was never decided despite repeated reminders being made by the petitioner. The inaction of the respondent compelled the petitioner to file another application for rectification dated 24 November 2017, wherein, she claimed entire interest as exempt besides the TDS credit. It is this application which has been disposed of by the impugned order dated 24 January 2018.

10. The ITO, in its impugned order, has held that with the insertion of Section 56(2)(viii), Section 145(A)(b) and Section 57(iv) in the Act by the Finance (No. 2) Act, 2009 w.e.f. 01 April 2010, the interest received on any kind of compensation is taxable. He, therefore, decided that the rectification application is not covered within the provisions of Section 154 of the Act. For the sake of completeness, the impugned order dated 24 January 2018 is reproduced as under:-

 INCOME TAX DEPARTMENT

1. Name of the assessee Smt. Geeta Bindal

2. Address J-3/102, J Extension, Kishan Kunj, Laxmi Nagar, Delhi-110092

3. PAN AAWPB3831C

4. Assessment Year 2013-14

5. Ward/Circle/Range Ward 64(2), Delhi

6. Status Individual

7. Previous Year F.Y. 2012-13

8. Section under which assessment is u/s 154 of the IT Act, 1961 made

9. Date of order 24.01.2018 Order U/s 154 of the Income Tax Act, 1961 The assessee filed her return of Income for the A.Y. 2013-14 on 03.03.2014 vide e- filing Acknowledgment No.116119060030314 declaring total income of Rs. 13,74,290/-. This total income included Rs. 5,54,082/-, received as interest on compensation of assessee's husband death vide High Court's order.

The assessee through her counsel filed an application dated 16.11.2017 for rectification u/s 154 of the Income Tax Act, 1961 for the A.Y. 2013-14 wherein it is contended that interest received on award received on death of the victim was not liable to tax since the same was not in the nature of income as per section 2 (24) of the Income Tax Act, 1961 and filed revised computation of income revising returned total income from Rs.13,74,290/- to Rs.4,55,410/-. She placed reliance on following judgments:

1. CIT vs. Oriental Insurance Company Limited 211 Taxman 369 (All)

2. CIT vs. Chiranji Lal Multanimal Rai Bahadur 179 ITR 157 (P&H) The rectification application in the light of above judgments was considered and held that with the insertion of section 56 (2) (viii), section 145A and section 57(iv) in the Income Tax Act, 1961 by the Finance (No.2) Act, 2009 w.e.f. 01.04.2010, the interest received on any kind of compensation is taxable within the previous of above quoted sections.

Thus, the contention raised by the assessee in her rectification application is not covered within the provisions of section 154 of the Income Tax Act, 1961 as the error is not apparent from record which is the main requirement of section 154 for carrying out any rectification.

The Supreme Court in the case of T.S. Balram, ITO vs. Volkart Bros. (1971 82 ITR 40), 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. A decision on a debatable point of law is not a mistake apparent from the record".

As discussed above, as the error is not apparent from record, therefore, the rectification application dated 16.11.2017 filed by the assessee and received in this office on 24.11.2017 is hereby rejected."

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11. A bare perusal of the reasoning assigned in rejection of rectification application indicates that the concerned authority has not given a thoughtful consideration to the provisions of Section 57(iv) of the Act, which requires a deduction of a sum amounting to 50% of the income referable to as per clause (viii) of Section 56(2) of the Act. Clause (viii) of Section 56(2) of the Act refers to the income by way of interest received on compensation or on enhanced compensation referred to in Section 145(A)(b) of the Act which is "interest received by an assessee on compensation or on enhanced compensation as the case may be".

12. It is, thus, seen that at least the aspect pertaining to whether the petitioner is entitled for deduction of a sum equal to 50% of such income, was required to have been specifically dealt with by the concerned authority. Apparently, the respondent has not alluded to any such consideration.

13. Therefore, under the facts of the present case, it can be safely concluded that the concerned authority has failed to exercise authority under Section 154 of the Act and accordingly, the matter requires to be reconsidered in light of the applicable provisions.

14. At this stage, is it noticed that so far as the deduction under Section 57(iv) of the Act is concerned, the same was sought for in a rectification application. Rather, it was required to have been claimed in the original ITR. Such a deduction has neither been claimed by the petitioner in the original ITR nor does any revised ITR appear to have been filed within the permissible time to remedy the situation. Therefore, under the peculiar circumstances of this case, this Court finds it appropriate to allow the petitioner to make an appropriate application under Section 119(2)(b) of the Act to the Central Board of This is a digitally signed order.

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Direct Taxes ['CBDT'] for extension of the time limit to make the aforesaid claims and in turn, the CBDT is directed to consider the same in accordance with law, within a period of four months from the date of receipt of such an application.

15. In case the CBDT allows the petitioner to file a revised return, let the same be done in accordance with the permission by the CBDT and on doing so, let the application of the petitioner for rectification under Section 154 of the Act be restored to its original number and decided thereafter, in accordance with law.

16. So far as the credit of TDS is concerned, the ITR dated 03 March 2014 filed by the petitioner unequivocally signifies that the same was claimed, however, it was not accepted. However, the credit of TDS to the account of the petitioner remains undisputed as per the counter affidavit filed by the respondent. Therefore, the aforesaid aspect may not be required to be reconsidered by the authority and instead, this Court finds it appropriate to direct for its credit to the account of the petitioner along with the applicable interest in accordance with law, as expeditiously as possible, not beyond four months from the date of receipt of the copy of the order passed today.

17. With the aforesaid directions, the impugned order dated 24 January 2018 is set aside. The petition stands disposed of alongwith the pending application(s), if any.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

JANUARY 29, 2024/MJ This is a digitally signed order.