Mahendra Mills Ltd vs Sheri P. B. Desai, Appellate Assistant ... on 4 March, 1975

Equivalent citations: 1975 AIR 910, 1975 SCR (3) 846, AIR 1975 SUPREME COURT 910, 1975 4 SCC 93, 1975 TAX. L. R. 395, 99 ITR 135, 1975 SCC (TAX) 219, 1975 UPTC 346, 1975 (1) SCJ 448, 1975 3 SCR 846, 1975 (1) ITJ 307

Author: Ranjit Singh Sarkaria

Bench: Ranjit Singh Sarkaria, V.R. Krishnaiyer, A.C. Gupta

PETITIONER:
MAHENDRA MILLS LTD.

Vs.

RESPONDENT:
SHERI P. B. DESAI, APPELLATE ASSISTANT COMMISSIONER OF

DATE OF JUDGMENT04/03/1975

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
KRISHNAIYER, V.R.
GUPTA, A.C.

CITATION:
1975 AIR 910 1975 SCR (3) 846
1975 SCC (4) 93

ACT:
Income-Tax Act, 1961--S. 35- -Scope of--Record of appeal--Meaning of

HEADNOTE:
in the course of assessment of the income of the assessee for the year 1959-60 the Income-tax Officer found a discrepancy between the value of its ,closing stock which was shown in its books as Rs. 5.89 lakhs and the records of the State Bank in which it was shown as Rs. 8.04 lakhs. The Income-tax Officer rejected the explanation of the assessee regarding the discrepancy and worked out the closing stock at Rs. 8.04 lakhs. When the assessee's appeal against this order was pending before the Tribunal, the Income-tax

Officer took up for assessment the income of the assessee for the assessment year 1960-61. Rejecting the contention of the assessee that the opening stock for the assessment year should be taken to be Rs. 8.04 lakhs but the Income-tax Officer took it as Rs. 5.89 lakhs. On Appeal the Appellate Assistant Commissioner accepted the contention of the assessee and reversed the decision of the Income-tax Officer. Neither party appealed against this order. Later, however, the Tribunal accepted the explanation of the assessee in regard to the discrepancy in the closing stock for the assessment year 1959-60 and held that the closing stock should be taken as Rs. 5.89 lakhs as shown in its books. Thereupon the Income-tax Officer moved the Appellate Assistant Commissioner to rectify his order relating to the assessment year 1960-61 and bring it in conformity with the Tribunal's order.

The Appellate Assistant Commissioner accordingly passed an orders

The assessee then moved the High Court under Art. 226 of the Constitution alleging that the Appellate Assistant Commissioner had overstepped the jurisdiction conferred under S. 35 of the Income-tax Act. The High Court dismissed the petition.

On appeal to this Court it was contended that the words 'record of appeal in s. 35 of the Act would mean the record for the assessment year 1960-61 and not the entire record of the assessee relating to the earlier years as also ,of later years; and (2) the Appellate Assistant Commissioner had no jurisdiction to rectify his decision by referring to something which took place for Years after that decision.Dismissing the appeal.

HELD : (1) For the Purpose of ascertaining the true stock position the record of the assessment for assessment year 1959-60, including the Tribunals decision, was not extraneous or irrelevant to the record of the appeal and could legitimately be looked into by the Appellate Assistant commissioner for the purpose of correcting the mistake. [852C]

Since the closing stock of one assessment year furnishes the figure of the opening stock for the succeeding year it follows that the record showing talk closing stock of assessment year 1959-60 formed a part of the evidence relevant to the assessment for assessment year 1960-61. To the extent of ascertaining the closing and opening stock positions, the two assessments telescoped into each other. The Tribunal's finding that the value of the closing took for assessment year 1959-60 had completely replaced the Income-tax Officers finding in regard to that fact with effect from the date of the Income-tax Officer's order relating to the assessment year 1959-60. If the income-tax Officer's tax Officer's

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order relating to assessment year 1959-60 was relevant to

and part of the 'record of appeal' the Tribunal's decision which superseded that finding was. equally so within the contemplation of s. 35 of the Act. [851G-H]
(2) The finding of the Tribunal as to the voluation of stock, although recorded subsequent to the appellate decision of the Appellate Assistant Commissioner, could be taken as forming part of the record of the appeal and taken into account for the purpose of correcting the mistake under s. 35, as to the value of the opening stock for the assessment year 1960-61, apparent from that record. [853B]
Commissioner of Income-tax v. Khem Chand Ramdas 61 I.T.R. 414-L.R. 65 I.A. 236, referred to.
M/s. Maharan Mills (Private) Ltd. v. The Income-tax Officer, Porbandar [1959] Suppl. 2 S.C.R. 547 and M. K. Venkatachalam v. Bombay Dyeing & Mfg. Co. Ltd., [1959] S.C.R. 703. followed.
(3) There is no room for apprehension that the income-tax authorities, under the guise of correcting mistakes lightly reopen assessments long past and closed and thus introduce an element of instability in the administration of the Act. A decision is a precedent on its own facts. Each case presents its own features The Income-tax authorities and the Tribunals are supposed to apply the ratio of a decision to the facts of particular cases with due care and discernment, hearing in mind the restricted scope of their jurisdiction under s. 35 and the object for which it is conferred. [853F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1793 of 1970.

From the judgment and order dated 24th June, 1970 of the Gujarat High Court in Special Civil Application No. 1259 of 1969.

S. T. Desai and I. N. Shroff, for the appellant. T. A. Ramachandran and S. P. Nayar, for the respondents. The Judgment of the Court was delivered by SARKARIA, J. This appeal directed against the judgment, dated 24.6.1970, of the High Court of Gujarat raises a question in regard to the interpretation of s.35 of the Indian Income-tax Act, 1922 (for short, called the Act). The assessee is a Limited Company which manufactures textiles in its Mill. For the assessment year 1959-60, the assessee showed in its books the value of its closing stock at Rs. 5,89,439/-. The Income-tax officer in the course of the assessment, detected that there was some discrepancy between the value of the stock of cotton shown in the books of the assessee and the records of the State Bank of India with which it had hypothecated that stock. The assessee tried to explain away this discrepancy by saying that it had given an incorrect figure of its stock to the Bank with a view to obtain higher amount of over-draft. The Income-tax Officer rejected this explanation and added Rs. 2,14,682/- to the value of the stock so that according to his assessment, the closing stock for the assessment year 1959- 60 worked out to Rs. 8,04,121/-. Having failed in first appeal before the Appellate Assistant

Commissioner, the assessee preferred a second appeal to the Tribunal.

Pending the appeal before the Tribunal, the Income-tax Officer took up the assessment of its income for the next assessment year i.e. 1960-61. The assessee contended that opening stock for the assessment year 1960-1961 should be taken as Rs. 8,04,121/-. The Income-tax Officer rejected this contention and took up the opening stock for that assessment year at Rs. 5,89,439/- without making the addition of Rs. 2,14,682/-. Against this order of the Income-tax Officer, the assessee went in appeal before the Appellate Assistant Commissioner who, on 30.6.1965, accepted the same, despite opposition from the Income-tax Officer who had personally appeared there to defend his order and held that the opening stock for the assessment year 19601961 be taken at Rs. 8,04,121/-. Neither party appealed against this order before the Tribunal.

On January 22, 1969, the Tribunal allowed the assessee's appeal referred to above relating to the assessment year, 1959-60, and accepted the assessee's explanation about the discrepancy relating to the value of stocks between its account-books and those of the Bank. The Tribunal directed that the addition of Rs. 2,14,682/- made by the Income-tax Officer to the closing stock relating to the assessment year 1959-60 be deleted. Thus, according to the Tribunal's decision, the closing stock for the assessment year 1959-60 (which would also be the opening stock for the succeeding year) was Rs. 5,89,439/ as shown in the books of the assessee.

Thereafter on March 26, 1959, the Income-tax Officer moved the Appellate Assistant Commissioner requesting that the latter's appellate order, dated 30.6.1965, relating to the assessment year 1960-61 be rectified and brought in conformity with the Tribunal's order.

The Appellate Assistant Commissioner then issued a notice under s.154 of the Act to, the assessee to show cause why the appellate order, dated 30.6.1965, be not rectified under s.35 of the Act. Despite objection from the assessee, on 28.6.1969, the Appellate Assistant Commissioner passed an order for rectifying his decision dated 30.6.1965 The order of rectification runs thus :

> record of appeal as pointed out in the I.T.0's letter dated 26.3.69 mentioned above. The appellate order which is now sought to be rectified, was passed on 30.6.65. The rectification is therefore in time.
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> Accordingly I direct that the value of opening stock for the A.Y. 60-61 be taken at Rs.
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> 5,89,439/-, being equal to the value of the closing stock determined by the Tribunal for the A.Y. 1959-60. Therefore, the relief of Rs. 2,14,682/- given to the assessee in the original appellate order, dated 30.6.1965, stands cancelled. The ITO is directed to give effect to this order."
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> The assessee then impugned this order by a writ petition under Article 226 of the Constitution before the Gujarat High Court, on the ground that the Appellate Assistant Commissioner had overstepped the jurisdiction conferred on him under s.35 of the Act. The High Court dismissed the petition. Hence this appeal.

> Before the High Court, the assessee raised two contentions which have been re-agitated before us. They are : (i) The Appellate Assistant Commissioner had no jurisdiction to make the impugned order because there was no mistake apparent "from the record of the appeal" within-the contemplation of s.35 of the Act. (ii) Assuming that the words "record of the appeal' in s.35 were comprehensive enough to include the record of other related proceedings, the Appellate Assistant Commissioner had no jurisdiction to rectify his decision dt. 30.6.65, by referring to some thing which actually and factually took place four years after that decision.

Elaborating his contentions, Mr. Desai submits that in the context of the present case, the words "record of the appeal" in s.35 would mean the record for the assessment year 1960-61 which the Appellate Assistant Commissioner had actually before him at the time of hearing of the appeal and not the entire record of the assessee relating to the earlier years and a fortiori of later years. Such appellate record, it is mentioned, had no apparent error which could be rectified under s.35. The argument proceeds, that the order of the Tribunal for the assessment year 1959-60, made on 22.1.1969-which gave rise to the mistake-was something subsequent and extraneous and could not, by any stretch of language, be called a part of the "record of the appeal"

> relating to the assessment year 1960-61. Support for this contention has been sought from a decision of the Mysore High Court in Ganapathi Subbaraya Hegde v. State of Mysore,(1) which proceeds on an interpretation of s.37 of the Mysore Agricultural Income-tax Act. Learned Counsel has tried to distinguish the, decision of this Court in M/s. Mahrana Mills (Private) Ltd. v. The Income-tax Officer. Porbandar(2) on the two-fold ground (i) that that was a case of depreciation in which the written-down value had to be calculated with reference to the record of past years, and
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> (ii) unlike the present case, there, the error was in existence and apparent from the record of the appeal at the time of its decision. it is argued that-Maharana Mills' case (supra) was not one where the mistake was rectified with reference to something happening subsequently to the original decision of the Appellate Assistant Commissioner.

Attempt has also been made to distinguish the Privy Council decision in Commissioner of Income-tax v. Khem Chand Ramdas(3) on the ground that there the mistake hid become apparent as a result of the cancellation of registration of the assessee firm in revision under s. 33 of the Act. As against this, Mr. Ramachandran, learned Counsel for the Revenue submits that the "record of the appeal" spoken of in s.35 is the entire evidence which could be looked into by the Appellate Assistant Commissioner for the purpose of the appeal. Since the closing stock of one year and the opening stock of the succeeding year must necessarily be the same. the record of the assessment year 1959-60, was also relevant and therefore, a part of the record of the appeal arising out of the assessment for 1960-61. It is further canvassed that the (1) 84 I.T.R. 523. (2) [1959] Supp 2 S.C.R. 547. (3) 61, I. T. R. 414- L.R. 651.

8--564SCI/75 Tribunal had for the I.T.O's finding as to the value of the closing stock for the assessment year 1959-60 being Rs. 8,04,121/- completely substituted its own finding regarding such value being Rs. 5,89, 439/-, with effect from the date of I.T.O's order, and thus the Tribunal's order, though passed subsequently, had, with retrospective effect, become a part of the record of the, appeal relating, to the assessment year 1960-61, which could legitimately be looked into by the Appellate Assistant Commissioner for the purpose of ascertaining and rectifying the mistake in his appellate decision. Reliance has been placed on the decisions of this Court in Maharana Mills (P) Ltd. v. Income-tax Officer, Porbandat (supra) and that of the Privy Council in Commis- sioner of Income-tax v. Khemchand Ramdas (supra). The material part of s.35 is in these terms "35(1). 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 assessmet order of 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 crucial words are those that have been underlined. The interpretation of the words "record of appeal" is not a matter which is res integra. It came up for consideration before this Court in Maharana Mills case (Supra). The appellant therein (hereinafter called the Mills) was assessed to income-tax for the assessment year 1953-54 and by an order of June 30, 1955, the I.T.O. allowed deprecia- tion under S. 10(2) (vi) of the Act in the amount of Rs. 3,48,105/-. On August 8, 1955, the Mills made an application before the I.T.O. for rectification of the order under s.35 of the Act pointing out certain mistakes in calculations of the depreciation amount. The Income-tax Officer by his order, dated February 27, 1956, corrected the "written down value" of the different properties of the Mills and determined the total allowable depreciation to be Rs.- 1,94,074/-. The Mills challenged this order of rectification on several grounds two of them, which are material for our purpose, were : (a) that the provision of s.35 under which the Income-tax Officer had acted, 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 (b) that, in any case, he had exceeded his jurisdiction under s.35 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 the miffs. The argument was that recalculation is not rectifying a mistake which is apparent from the record. This Court negatived these contentions with this observation "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."

This Court then noticed Venkatachalam's case(1) and Khem Chand's case (supra) in support of the view taken by it. Counsel for the then appellant sought to distinguish these cases 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. This argument was repelled in these terms :

> "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 arithmatic mistake in the account of the Written Down Value of the properties 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 he 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 that is not rectifying a mistake apparent from the record but dehors it.", The observations of this Court, quoted above, fully apply to the facts of the case in hand. It will bear repetition that the closing stock for the assessment year 1959-60 as entered in the books of the assessee, was Rs. 5,89,439/-, and as found by the Income-tax Officer was Rs. 8,04,121/-. Since the closing stock of one assessment year furnishes the figure of the opening stock for the succeeding year, it follows &,at the record showing the closing stock of assessment year 1959-60 formed a part of the evidence relevant to the assessment for the assessment year 1960-61. Thus to the extent of ascertaining the closing and opening stock positions, the two assessments telescoped into each other. Indeed, it was on this basis that the Appellate Assistant Commissioner had by his decision dated 30-6-1965 allowed the assessee's appeal regarding A.Y. 1960-61. The Tribunal's finding (1) [1959] S.C.R. 703.

that the value of the closing stock for A.Y. 1959-60 should be Rs. 5,89,439/-, had completely replaced the Income-tax Officer's finding in regard to that fact with effect from the date of the Income-tax Officer's-order relating to A.Y. 1959-60. if the I.T.O.'s finding with regard to the closing stock for A.Y. 1959-60 was relevant to and part of the "record of appeal", the Tribunal's decision which superseded that finding" was equally so within the contemplation of s.35 of the Act. It cannot be gainsaid that the mistake in regard to the opening stock for A.Y. 1960-61 being Rs. 8,04,121/-, was quite apparent when the Appellate Assistant Commissioner undertook to rectify his appellate order dated 30-6-65, the correct figure of valuation finally determined by the Tribunal being Rs. 5,89,439/-. Thus considered, it is clear that for the purpose of ascertaining the true stock position the record of the assessment for A.Y. 1959-60, including the Tribunal's decision, was not extraneous or irrelevant to the record of the appeal and could legitimately be looked into for the purpose of correcting the mistake by the Appellate Assistant Commissioner. Thus the first contention of the appellant stands overruled. The second point canvassed by Shri Desai is well-nigh covered by the ratio of the privy Council decisions in Khem Chand's case (supra). The assessee in that case did not

produce his account books and the Income tax Officer made an assessment on the 'best-judgment basis'. On the application of the assessee, however, be all-owed registration of the assessee-firm on-January 17, 1927. As it was a registered firm, he did not in the assessment order made under s.23(4) on the same day, assess any super-tax. The Commissioner of Income-tax in exercise of his powers under s.33 of the Act, called for the record, cancelled the registration on January 28, 1927, and directed the I.T.O. to take necessary consequential action. The result was that by an order, dated May 4, 1929, the assessee was assessed to super-tax. Three days later, a demand notice was issued. On these facts, delivering the opinion of the Judicial Committee, Lord Romer made these pertinent observations in regard to the applicability of s.35 :

> "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 the record-it would be apparent that a mistake had been made in stating that no super-tax was leviable."

From the quotes above, it is evident that the Judicial Committee considered the order of the Commissioner cancelling the registration of the assessee's firm-although passed about 11 days after the original assessment-to have formed part of the record of the assessment, for the purpose of rectifying the mistake as a mistake apparent from the record of the case. On parity of reasoning, in the instant case, the finding of the Tribunal as to the valuataion of the stock, although recorded subsequently to the appellate decision of the Appellate Assistant Commissioner, could be taken as forming part of the record of appeal and taken into account for the purpose of correcting the mistake, under s.35, as to the value of the opening stock for A.Y. 1960-61, apparent from that record.

We do not want to overburden this judgment by a discussion of Ganapatho Subbaraya Hegde's case (supra) cited by Shri Desai. Suffice it to say that this was a case under s.37 of the Mysore Agricultural Income-tax Act, 1957. The notice for rectification issued in that case and the orders of the authority were found to be defective in as much as they did not state that there was any mistake apparent on the record of the assessment proceedings for the previous three years in question. Maharana Mills' case and Khemchand's case (supra) were not noticed by the High Court in that case. Lastly, Shri Desai urged that we should not lose sight of the startling results which might flow from a liberal interpretation of s.35. It is apprehended that if the phrase "record of the appeal" is widely interpreted so as to cover the records of all collateral proceedings and subsequent events, it would leave the door wide open to endless harassment of assessees; the income-tax authorities would under the guise of correcting mistakes, lightly reopen assessments long past and closed, and thus introduce an element of disconcerting instability in the administration of the Act.

In our opinion, there is no room for any such apprehension. It must be remembered that a decision is a precedent on its own facts. Each case presents its own features. The income-tax authorities and Tribunals are supposed to apply the ratio of a decision, to the facts of particular cases with due care and discernment, bearing in mind the restricted scope of their jurisdiction under s.35 and the object

for which it is conferred.

The appeal fails and is dismissed with costs.

P.B.R. Appeal dismissed.