Anchor Pressings (P) Ltd vs Commissioner Of Income Tax, U.P. & Ors on 16 July, 1986

Equivalent citations: 1987 AIR 575, 1986 SCR (3) 223, AIR 1987 SUPREME COURT 575, 1986 TAX. L. R. 1168, (1986) 161 ITR 159, (1986) 3 SCJ 230, (1986) 82 TAXATION 82, 1986 UPTC 1213, 1986 SCC(TAX) 596, (1986) 58 CURTAXREP 126, (1987) 27 ELT 590, 1986 (3) SCC 439, (1986) 27 TAXMAN 295, 1986 UJ(SC) 2 519, (1986) 3 SUPREME 363, (1986) JT 235 (SC)

Author: R.S. Pathak

Bench: R.S. Pathak, Sabyasachi Mukharji

PETITIONER:
ANCHOR PRESSINGS (P) LTD.

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, U.P. & ORS.

DATE OF JUDGMENT16/07/1986

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
MUKHARJI, SABYASACHI (J)

CITATION:
1987 AIR 575 1986 SCR (3) 223
1986 SCC (3) 439 JT 1986 235
1986 SCALE (2)86

ACT:
Income-tax Act, 1961 , s. 154 read with s. 84-Rectification of assessment-Precise factual material to support the claim for relief-Necessity for.
Super profits Tax Act, 1963-Assessment record-Whether could be regarded as integral part of the record of income-tax assessment.

HEADNOTE:
Section 84 (now redesignated ass. 80J) of the Income-tax Act, 1961 as it stood at the relevant time, provided

that income-tax would not be payable by an assessee on so much of the profits and gains derived from an industrial undertaking to which the section applied as did not exceed six per cent per annum on the capital employed in such undertaking computed in the prescribed manner. Several conditions laid down therein had to be satisfied before the grant of relief could be considered. Section 154 empowers the Income-tax Officer to rectify any mistake apparent from the record and for that purpose to amend an assessment order.

The appellant who did not make a claim for rebate under s. 84 either during the assessment proceedings or at the appeal stage subsequently made an application to the Income-tax Officer under s. 154 praying for rectification of the assessment order by grant of relief under s. 84, which was rejected. The revision sought before the Commissioner also failed.

The writ petition filed before the High Court having been dismissed, the appeal by special leave was preferred. It was contended: (1) that an obligation was imposed on the Income-tax officer by the statute to grant relief which could not be refused merely because the appellant had omitted to claim the same, and (2) that the record of the super profits tax assessment containing the material, which lay before the

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Income-tax Officer, must be regarded as an integral part of the record of the income-tax assessment for granting relief under s. 84.

Dismissing the appeal, the Court,

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HELD: Rectification could only be justified on the ground of a mistake apparent from the record. If the record did not contain any material, it could not be said that the Income-tax Officer had committed a mistake in omitting to grant relief under s. 84. [227C-D]

Although the jurisdiction under s. 154 to rectify any mistake apparent from the record is wider than that provided under r. 1 of Order XLVII of the Code of Civil Procedure to rectify an error apparent on the face of the record, nonetheless there must be material to support the claim to relief under s. 84, and unless such material can be referred to, no grievance can be made if the Income-tax Officer refuses to rectify the assessment and refuses relief under s. 84.[227D-F]

There is a close relationship between the Super Profits Tax Act and the Income Tax Act, and any change in the assessment made under the latter has its consequential impact on the assessment made under the former. The converse is equally true, especially in view of s. 20(2) of the Super Profits Tax Act which provides that all the information contained in any statement or return made or furnished under the provisions of that Act or obtained or collected for the

purpose of that Act may be used for the purpose of the Income Tax Act. Therefore, if the record of the super profits tax assessment contains material pertaining to the claim under s. 84 of the Income-tax Act, such material can be considered by the Income-tax Officer for the purpose of granting relief under s. 84 in the income-tax assessment.[228D-G]

In the instant case, the appellant has failed to show that all the material required for satisfying the conditions requisite for the grant of relief under s. 84 existed on the super profits tax record at the time when the income-tax assessment was completed. Therefore, it cannot be said that in omitting to grant relief under s. 84 when making the assessment order, the Income-tax Officer committed a mistake apparent from the record.[229C-D]

Subhash Chandra Sarvesh Kumar v. Commissioner of Income-tax and Another, [1981] 132 I.T.R. 619 and Income-tax Officer, Alwaye v. Asok Textiles Ltd., [1961] 41 I.T.R. 732, referred to.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1700 (NT) of 1974.

From the Judgment and Order dated 23.9.1972 of the Allahabad High Court in Writ No. 2956 of 1972.

S.K. Dhingra for the Appellant.

M.K. Banerjee, Additional Solicitor General, Miss A. Subhashini and B.B. Ahuja for the Respondent.

The Judgment of the Court was delivered by PATHAK, J: This appeal by special leave is directed against the judgment and order of the High Court of Allahabad dismissing a writ petition filed by the appellant.

The appellant is a private limited company carrying on the business of the manufacture and sale of locks used in suit cases. It filed a return of its income for the assessment year 1963-64 and was assessed to income-tax by an assessment order dated March 12, 1968. No claim was made by the assessee for rebate under s. 84 of the Income Tax Act, 1961. There was an appeal by the assessee to the Appellate Assistant Commissioner of Income Tax but no claim was made for rebate at that stage either. Subsequently on August 20, 1969 the appellant made an application under s. 154 of the Income Tax Act praying for rectification of the assessment order by the grant of relief under s. 84 of the Act. The application was rejected by the Income Tax Officer. A revision application moved by the appellant before the Commissioner of Income-tax was also rejected on March 6, 1972. Against the order of the Commissioner the appellant now filed a writ petition in the High Court of Allahabad.

The High Court dismissed the writ petition on September 23, 1972. And now this appeal by special leave.

Section 84 of the Income Tax Act, as it stood at the relevent time, provided that income-tax would not be payable by an assessee on so much of the profits and gains derived from any industrial undertaking to which the section applied as did not exceed 6 per cent per annum on the capital employed in such undertaking computed in the prescribed manner. The section applied to an industrial undertaking which satisfied certain conditions detailed in the section. It may be observed that s. 84 was deleted with effect from April 1, 1968 and now finds place as s. 80J in the Act.

The appellant contends that the Income-tax authorities were obliged to exercise the jurisdiction conferred by s. 154 of the Act and grant relief to the appellant under s.

84. Section 154 empowers the Income Tax Officer to rectify any mistake apparent from the record and for that purpose to amend an assessment order passed by him. It is urged that the income-tax authorities and the High Court erred in holding that no mistake was apparent from the record merely because no claim to relief under s. 84 had been made by the appellant before the Income Tax officer during the assessment proceedings. It is contended that an obligation was imposed on the Income Tax Officer by the statute to grant such relief and it could not be refused merely because the appellant had omitted to claim the relief. While we believe the appellant is right in his contention, we do not think that the mere existence of such an obligation on the Income Tax Officer is sufficient. Before the Income Tax Officer can grant relief there must be clear data on the assessment record sufficient to enable him to consider whether the relief should be granted. In the absence of such material, no fault can be found with the Income Tax Officer for not making an order under s. 84 favouring the assessee. It will be noticed from the provisions of s. 84 that several conditions must be satisfied before the grant of relief can be considered. The industrial undertaking should not have been formed by the splitting of, or the reconstruction of, a business already in existence. It should not have been formed by the transfer to a new business of a building, machinery or plant previously used for any purpose. It should manufacture or produce articles in any part of India, which manufacture or production should have begun at any time within 23 years next following April 1, 1948 or such other further period as the Central Government may specify. An industrial undertaking manufacturing or producing articles should be found to employ 10 or more workers in a manufacturing process carried on with the aid of power or to employ 20 or more persons in a manufacturing process carried on without the aid of power. These are some of the conditions which need to be fulfilled before relief under s. 84 can be granted. It is apparent that precise factual material must be contained in the record in order to enable the Income Tax Officer to discharge his obligation to grant relief under s. 84. It has not been shown to us that the record before the Income Tax Officer contained all that information.

Our attention was drawn to Subhash Chandra Sarvesh Kumar v. Commissioner of Income-tax and Another, [1981] 132 I.T.R. 619 where the Allahabad High Court quashed an order of the Commissioner of Income-tax rejecting revision applications for the grant of relief under s. 80J and s. 80HH of the Income Tax Act, on the ground that the Commissioner should have considered whether there was material on the record to sustain the claim of the assessee to relief, and the fact

that claim was not made formally in the return or during the pendency of the assessment proceedings before the Income Tax Officer should not have prevented the Commissioner from considering whether the assessee was entitled to relief. That was a case where the assessee complained in the writ petition that it lay within the jurisdiction of the Commissioner to entertain the claim of the assessee even though the claim had not been made before the Income Tax officer. The present is a case, however, where the appellant sought to invoke the jurisdiction of the Income Tax Officer to rectify the assessment order. That can only be justified on the ground of a mistake apparent from the record. If the record does not contain any material, it cannot be said that the Income Tax Officer has committed a mistake in omitting to grant relief under s. 84. We are conscious that the jurisdiction under s. 154 of the Income Tax Act is, as pointed out by this court in Income- tax Officer, Alwaye v. Asok Textiles Ltd., [1961] 41 I.T.R. 732, wider than that provided under rule 1 of Order XLVII of the Code of Civil Procedure. Rule 1 of Order XLVII of the Code confines the jurisdiction of the Court to the rectification of "an error apparent on the face of the record" while s. 154 of the Income Tax Act, 1961 (which corresponds to s. 35 of the Income Tax Act 1922) uses wider language and empowers the Income-tax authorities to rectify any mistake "apparent from the record". Nonetheless there must be material to support the claim to relief under s. 84, and unless such material can be referred to no grievance can be made if the Income Tax Officer refuses to rectify the assessment and refuses relief under s. 84.

Learned counsel for the appellant says that the material is contained in the record of the assessment made on the appellant under the Super Profits Tax Act, 1963. He contends that the record of the Super Profits Tax assessment must be regarded as an integral part of the record of the income-tax assessment and, therefore, it must be inferred that the material necessary for granting relief under s. 84 in the income-tax assessment lay before the Income Tax Officer.

The Super Profits Tax Act, 1963 was enacted to impose a special tax on certain companies. The tax is charged on the excess of the chargeable profits of a company over the standard deduction and the "chargeable profits", according to the definition in sub-s. (5) of s. 2 of that Act, means the total income of an assessee computed under the Income Tax Act, 1961 adjusted in accordance with the provisions of the First Schedule. In many respects, the Super Profits Tax Act borrows its provisions from the Income Tax Act, and the scheme for assessment, appeals, revision and rectification in the Super Profits Tax Act follows closely the pattern set forth in the Income Tax Act. As has been noted the computation of chargeable profits turns on the computation of the total income determined under the Income Tax Act. Where any order of rectification is made under s. 154 or under s. 155 of the Income Tax Act recomputing the total income of an assessee, a consequential recomputation of the chargeable profits is provided for by s. 15 of the Super Profits Tax Act. Moreover, the Super Profits Tax payable by a company for the assessment year is deductible from the total income of the company for that assessment year in computing the distributable income of a company for the purposes of s. 104 and s. 105 of the Income Tax Act. There is undeniably a close relationship between the Super Profits Tax Act and the Income-tax Act and any change in the assessment made under the Income Tax Act has its consequential impact on the assessment made under the Super Profits Tax Act. It is apparent therefore, that the record of an income tax assessment can be regarded as part of the record of a Super Profits Tax assessment. The converse can also be true that is made abundantly clear by sub-s. (2) of s. 20 of the Super Profits Tax Act which provides that all

the information contained in any statement or return made or furnished under the provisions of the Super Profits Tax Act or obtained or collected for the purposes of that Act may be used for the purposes of the Income Tax Act. To the extent that information contained in the Super Profits Tax record is employed for the purpose of the Income Tax proceeding, it cannot be doubted that the Super Profits Tax record becomes part of the Income Tax record. It is apparent that if the record of the Super Profits Tax assessment contains material pertaining to the claim under s. 84 of the Income Tax Act, such material can be considered by the Income Tax Officer for the purpose of granting relief under s. 84 in the Income Tax assessment. In that sense and to that degree learned counsel for the assessee is perfectly right in contending that the record of the Super Profits Tax assessment becomes part of the record of the Income Tax assessment.

That does not suffice, however, to entitle the assessee to relief. As has been mentioned earlier, there are a number of conditions which must be satisfied before relief can be granted under s. 84. All that data was evidently not contained in the Super Profits Tax assessment record at the time when the Income Tax assessment was completed. The Additional Commissioner of Income Tax, while dismissing the revision petition of the assessee against the order of the Income Tax Officer refusing to rectify the Income Tax assessment under s. 154, went through the Income Tax record and the Super Profits Tax record of the assessee and found that no attempt had been made at any stage by the assessee to place facts on the record indicating that the undertaking belonging to the assessee was a new one and was entitled to relief under s. 84. He noted that in the return relating to the Super Profits Tax Act the assessee had made a claim for relief under s. 84, but he pointed out that the claim had not yet been examined. It has also not been shown to us that all the material required for satisfying the conditions requisite for the grant of relief under s. 84 existed on the Super Profits Tax record at the time when the income-tax assessment was completed. When that is the position, it can hardly be said that in omitting to grant relief under s. 84 when making the assessment order the Income Tax Officer committed a mistake apparent from the record. We must remember that we are dealing with a challenge to an order refusing rectification and not to an order directly assailing the assessment.

In the result, the appeal fails and is dismissed with costs.

P.S.S. Appeal dismissed.