

Mahendra Mills Ltd.

Vs

P B Desai, Appellate Assistant Commissioner of Income-Tax, and Another.

Civil Appeal No. 1793 of 1070

(V. R. Krishna Iyer, R. S. Sarkaria, A. C. Gupta JJ)

04.03.1975

JUDGMENT

SARKARIA J. -

1. This appeal directed against the judgment, dated June 24, 1970, of the High Court of Gujarat raises a question in regard to the interpretation of section 35 of the Indian Income-tax Act, 1922 (for short, called "the Act").

The assessee is a limited company which manufactures textiles in its mills. 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 overdraft. 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 of its income for the next assessment year 1960-61 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 June 30, 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 1960-61 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 June 30, 1965, relating to the assessment year 1960-61, be rectified and brought in conformity with Tribunal's order.

The Appellate Assistant Commissioner then issued a notice under section 154 of the Act to the assessee to show cause why the appellate order dated June 30, 1965, be not rectified under section 35 of the Act. Despite objection from the assessee, on June 28, 1969, the Appellate Assistant Commissioner passed an order for rectifying his decision dated June 30, 1965. The order of rectification runs thus :

"... in the instant case there is a mistake apparent from the record of the appeal as pointed out in the Income-tax Officer's letter dated March 26, 1969, mentioned above. The appellate order which is now sought to be rectified was passed on June 30, 1965. The rectification is, therefore, in time. Accordingly, I direct that the value of opening stock for the assessment year 1960-61, be taken at Rs. 5,89,439, being equal to the value of the closing stock determined by the Tribunal for the assessment year 1959-60. Therefore, the relief of Rs. 2,14,682 given to the assessee in the original appellate order, dated June 30, 1965, stands cancelled. The Income-tax Office is directed to give effect to this order".

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 section 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 reargued 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 section 35 of the Act. (ii) assuming that the words "record of the appeal" in section 35 were comprehensive enough to include the record of other related proceedings, the Appellate Assistant Commissioner had no jurisdiction to rectify his decision dated June 30, 1965, by referring to something 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 section 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 section 35. The argument proceeds, that the order of the Tribunal for the assessment year 1959-60, made on January 22, 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, which proceeds on an interpretation of section 37 of the Mysore Agric

As against this, Mr. Ramachandran, learned counsel for the revenue, submits that the "record of the appeal" spoken of in section 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 Tribunal had, for the Income-tax Officer'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. 5,89,489, with effect from the date of the Income-tax Officer'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 legit

The material part of section 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 assessment order or 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.

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