SUPREME COURT OF INDIA

Sree Ayyanar Spinning & Weaving M.Ltd.

Vs.

Commissioner of Income Tax

C.A.No.3246 of 2008

(S.H. Kapadia and B. Sudershan Reddy JJ.)

01.05.2008

ORDER

1. Leave granted.

2. In this Civil Appeal filed by the assessee - appellant, we are required to decide the scope of Section 254(2) of the *Income Tax Act, 1961* (for short the said Act).

3. The assessee is a Company incorporated under the *Companies Act, 1956*. It carries on the business of manufacture of cotton and man made fiber yarn.

4. For the Assessment Year 1989-90, assessment under Section 143(3) was framed by the Deputy Commissioner of Income Tax, Madurai, wherein the said authority determined the taxable total income for 21 months ending 31st March, 1989 at Rs.45,92,240/-. This order was passed on 27th February, 1992. The determination of the taxable total income was based on Section 115J of the Act. In the said assessment order the total income of the assessee was computed at Rs. 42,98,019/- and on scrutiny of the said computation and the balance-sheet along with the return the Deputy Commissioner of Income Tax reworked the computation as indicated at page 63 of Volume II in this case.

5. Suffice it to state that the total profit was reworked at Rs.1,53,07,444/-. Thirty per cent thereof was reworked at Rs.45,92,239/-. In the process of reworking the computation under Section 115J, the Deputy Commissioner added to the profit the excess depreciation which was debited in the profit and loss account in view of the difference which arose due to the change in the method of accounting adopted by the assessee for the claim of depreciation on machinery retrospectively from the year ending 30th June, 1983. The assessee had changed its method of claiming depreciation from Straight Line Method (SLM) to Written Down Value Method and in that connection it was argued by the assessee that the profit stood computed correctly in accordance with the provisions of the *Companies Act, 1956* and, therefore, 273) the assessee submitted that the Assessing Officer had no authority to go beyond the book profits, correctly computed by the assessee in accordance with the provisions of the *Companies Act, 1956*.

6. Suffice it to state at this stage that in this Civil Appeal we are not concerned with the merits, i.e., reworking of the computation by the Deputy Commissioner of Income Tax.

7. However, in that connection the Department contends that the judgment of this Court in Apollo Tyres was not applicable to the facts of the present case because in that case the issue involved was regarding admissibility of deduction relating to extra shift depreciation for past years which were not claimed by Apollo Tyres in the relevant years, whereas in the present case the claim of the assessee arose due to the change in the rate of depreciation brought about by Schedule XIV to the Companies Act which was inserted with effect from 2nd April, 1987. It is urged on behalf of the Department that the judgment of this Court in the case of Apollo Tyres (supra) was not applicable as in the present case the assessee had debited excess depreciation of Rs.1,10,09,445/- to the profit and loss account for the period 1.7.1987 to 30.6.1988 which consisted of Rs.19,24,684/-. According to the Department the excess depreciation of Rs.19,24,683/- was due to the change in the method of claiming depreciation from Straight Line Method to Written Down Value Method and, therefore, the judgment of this Court in Apollo Tyres case was not applicable. We have referred to the submissions of both sides on merits with which we are strictly not concerned. In this case we are only concerned with the interpretation of Section 254(2) regarding powers of the Tribunal in the matter of rectification of mistakes apparent from the record. This controversy has arisen because on 9th December, 1996, ITAT in ITA No. 719(MDS)/94 had passed an order upholding the order of CIT (Appeals) on computation of income under Section 115J of the said Act. By the said order ITAT had dismissed the appeal of the assessee on the ground that the profit and loss account of the assessee did not reflect correct picture for the Assessment Year 1989-90. On 2nd August, 2000 assessee had moved Miscellaneous Application bearing No. 40/2000 praying for recall of the order dated 9th December, 1996 by mainly relying upon the judgment of this Court in Apollo Tyres' case. At this stage, it may be noted that the miscellaneous application dated 2nd August, 2000 was filed within four years from the date of the Tribunal's Order dated 9th December, 1996. To complete the chronology of events, it may be stated that on 31st January, 2003 following the judgment of this Court in Apollo Tyres Limited the Tribunal allowed the rectification application filed by the assessee against which the Department carried the matter in appeal to the High Court under Section 260A of the Income Tax Act.

8. By the impugned judgment the High Court came to the conclusion that under Section 254(2) the Tribunal could not have allowed rectification beyond four years. That, the Tribunal had no power to rectify the mistake after four years which time is set out in Section 254(2) itself for passing an order of rectification either suo motu or an application filed either by the assessee or by the Assessing Officer. The High Court did not go into the merits of the case. The High Court allowed the appeal and set aside the order of the Tribunal only on the ground of limitation. Hence, this Civil Appeal by Special Leave.

9. In the light of the above controversy we set out hereinbelow provisions of Section 254(2) of the 1963 Act which read as follows:- "The Appellate Tribunal, may at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the

record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer."

10. Analysing the above provisions, we are of the view that Section 254(2) is in two parts. Under the first part, the Appellate Tribunal may, at any time, within four years from the date of the order, rectify any mistake apparent from the record and amend any order passed by it under sub-section (1). Under the second part of Section 254(2) reference is to the amendment of the order passed by the Tribunal under sub-section (1) when the mistake is brought to its notice by the assessee or the Assessing Officer. Therefore, in short, the first part of Section 254(2) refers to suo motu exercise of the power of rectification by the Tribunal whereas the second part refers to rectification and amendment on an application being made by the Assessing Officer or the assessee pointing out the mistake apparent from the record. In this case we are concerned with the second part of Section 254(2). As stated above, application for rectification was made within four years. Application was well within four years. It is the Tribunal which took its own time to dispose of the application.

11. Therefore, in the circumstances, the High Court had erred in holding that the application could not have been entertained by the Tribunal beyond four years.

12. In this connection, our attention is also invited to the judgment of the *Rajasthan Another*[1] wherein an identical controversy arose for determination and the view taken by that Court was as follows:-

> "Once the assessee has moved the application within four years from the date of appeal, the Tribunal cannot reject that application on the ground that four years have lapsed, which includes the period of pendency of the application before the Tribunal. If the assessee has moved the application within four years from the date of the order, the Tribunal is bound to decide the application on the merits and not on the ground of limitation. Section 254(2) of the *Income Tax Act, 1961*, lays down that the Appellate Tribunal may at any time within four years from the date of the order rectify the mistake apparent from the record but that does not mean that if the application is moved within the period allowed, i.e., four years, and remains pending before the Tribunal, after the expiry of four years the Tribunal can reject the application on the ground of limitation."

13. We are in agreement with the view expressed by the Rajasthan High Court in the case of *Harshvardhan Chemicals and Minerals Ltd*. (supra).

14. For the aforesated reasons, we set aside the impugned judgment of the High Court and restore T.C.(A) No. 2/2004 on the file of the Madras High Court for fresh decision on the merits of the matter as indicated hereinabove. All contentions on merits are expressly kept open. We express no opinion on the merits of the case whether rectification application was at all maintainable or not and whether the judgment in the case of Apollo Tyres was or was not applicable to the facts of this case. That question will have to be gone into by the High

court in the above T.C.(A) No. 2/2004. Accordingly, the Civil Appeal filed by the assessee stands allowed with no order as to costs.

[1]*(2002 (256) ITR 767)*