

PATNA HIGH COURT

Bihar State Road Transport Corporation

Vs

Commissioner of Income Tax

(Nazir Ahmad, J.)

08.04.1986

JUDGEMENT

Nazir Ahmad, J.

(1.) A consolidated statement of the case has been submitted by the Income-tax Appellate Tribunal, Patna Bench "A", Patna (hereinafter referred to as "the Tribunal"), under Section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), referring the following common question of law for the assessment years 1960-61 and 1961-62 at the instance of the assessee for the opinion of this court: "Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the Income-tax Officer could rectify under Section 154 the orders of assessment for the assessment years 1960-61 and 1961-62 by redetermining the written down value of the various assets ? "

(2.) THE Tribunal has also referred the following questions of law for the assessment years 1960-61 and 1961-62 at the instance of the Commissioner of Income-tax, Bihar, Patna, for the opinion of this court: "(1) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in cancelling the Income-tax Officer's order under Section 154 passed on November 14, 1969, for the assessment year 1960-61 on the ground that it was barred by limitation ?(2) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that penal interest under Section 217 of the Income-tax Act, 1961, could not be charged for the assessment years 1960-61 and 1961-62 in proceedings under Section 154 ?" Before we proceed with the facts of the case, it is necessary to point out that Taxation Cases Nos. 127 and 128 of 1975 have been registered on the basis of the question suggested at the instance of the assessee, Bihar State Road Transport Corporation, Patna, whereas Taxation Cases Nos. 129 to 131 of 1975 have been registered on the basis of the questions suggested by the Commissioner of Income-tax, Bihar, Patna. The relevant facts of the case can be culled from the statement of the case. Bihar State Road Transport Corporation, Patna (hereinafter referred to as the assessee), is a State-owned Corporation which took over the transport undertaking run by the State Government departmentally earlier. The take-over was on the basis of the balance-sheet of the undertaking. For the assessment year 1960-61, the assessment order was passed under Section 143(3) of the Act on February 15, 1965, and in this assessment order, some loss was determined and depreciation was carried forward. Similarly, the assessment for the assessment year 1961-62, was

completed on November 16, 1965, by the Income-tax Officer (hereinafter referred to as the Income-tax Officer), and while completing the assessment, a huge amount of depreciation had been claimed on the fleet of buses owned by the assessee and the claim of depreciation was allowed. The Income-tax Officer discovered certain mistakes in the assessment order for 1960-61 and he passed an order under Section 154 on August 17, 1966, rectifying the order of assessment. A similar order was passed in respect of the assessment year 1961-62. In these rectification orders, the Income-tax Officer changed the status of the assessee from that of an association of persons to that of an individual. Besides this, the Income-tax Officer made certain changes in the depreciation allowance and, whereas in the original order the depreciation had been allowed for a full year on the additions made by the Income-tax Officer, he now allowed the depreciation (only) for the period of actual user of these buses. Later on, the Income-tax Officer found that there were certain mistakes in the allowance of depreciation and, according to him, depreciation had been allowed in excess of what was actually allowable to the assessee. The mistake found by the Income-tax Officer was that the written down value of the buses taken over by the assessee from the Government had been taken in the earlier order on a wrong figure in so far as the depreciation reserve which had been created in the balance-sheet had not been taken into consideration in determining the written down value of those buses. Cost of the buses, as taken by the Income-tax Officer, was Rs. 1,51,65,473 and this was the figure which appeared in the balance-sheet for the accounting year ending on March 31, 1960. The Income-tax Officer found that in the same balance-sheet, there was a depreciation reserve of Rs. 1,12,69,253. This reserve had been created from year to year and was kept in a separate account. The cost of the buses was not reduced by this figure of depreciation in the balance-sheet. The Income-tax Officer was of the view that on the basis of this balance-sheet, the actual cost of acquisition should be taken after deducting the amount of depreciation reserve. This, according to the Income-tax Officer, was the consideration for the buses taken over by the assessee. Thus, the Income-tax Officer worked out the cost of acquisition of buses at Rs. 38,98,220. According to the Income-tax Officer, this was a mistake apparent from the record and he, therefore, rectified this figure and allowed lesser depreciation to the assessee. This order under Section 154 of the Act was passed on November 14, 1969. As a result of this order, the depreciation allowed to the assessee was reduced from Rs. 37,91,368 to Rs. 9,56,734. The orders of the Income-tax Officer passed under Section 154 of the Act for the assessment years 1960-61 and 1961-62 have been annexed and marked as annexures "A" and "A-1" forming part of the statement of the case. Before the Appellate Assistant Commissioner, it was claimed by the assessee that the order of rectification under Section 154 of the Act in respect of the assessment year 1960-61 was barred by limitation. According to the assessee, this order dated November 14, 1969, was seeking to rectify the original assessment order passed by the Income-tax Officer on February 15, 1965, and it did not seek to rectify any later order of rectification passed by the Income-tax Officer. The Appellate Assistant Commissioner rejected this plea of the assessee and also held that the provisions of Section 154 of the Act had been correctly applied. Regarding the quantum of rectification the Appellate Assistant Commissioner accepted the working by the Income-tax Officer though he granted some relief in working out the terminal allowance. The consolidated order of Appellate Assistant Commissioner for the two assessment years has been annexed and marked as annexure B forming part of the statement of the case. Before the Tribunal the assessee pleaded that the order of the Income-tax Officer passed on November 14, 1969, was barred by limitation as the mistake, if any, in the determination of the written down value of the old buses was there in the

original order and it was merely repeated when the rectification order was passed by the Income-tax Officer on August 17, 1966. He submitted that the order of the Income-tax Officer could not be a rectification of the order passed on August 17, 1966, as the mistake, which was sought to be rectified, had been committed in the original order. The assessee further claimed that the provisions of Section 154 of the Act did not apply to the facts of the present case as the mistakes sought to be corrected could not be considered as mistakes apparent from the record. The second ground raised before the Tribunal was that the Income-tax Officer could not charge interest under Section 217 of the Act in an order of rectification. It was pointed out that in the original assessment no interest had been charged as there was no positive income as a result of the assessment. When that income was turned into a positive income as a result of rectification, the Income-tax Officer has proceeded to charge interest also. For the assessment year 1961-62, similar arguments were repeated except the argument regarding the time-bar as it was accepted that the rectification order was within four years of the original assessment order.

(3.) ACCORDING to the departmental representative, the rectification by the Income-tax Officer, was a rectification of the order dated August 17, 1966, passed in 1966 as in that order the original assessment order had merged. It was further argued that the mistake committed by the Income-tax Officer was apparent from the record and could be found out by having a look at the balance-sheet. The Tribunal considered these submissions and disposed of the points raised by the assessee by order dated July 19, 1973. Later on, the assessee moved a miscellaneous petition pointing out that the grounds regarding charge of interest under Section 217 of the Act had not been specifically disposed of in the order of the Tribunal. The Tribunal considered those arguments in separate miscellaneous orders dated May 17, 1974, and thus the Tribunal considered the matters raised before it. The Tribunal held that, on the facts of the present case, the provisions of Section 154 of the Act would apply and the mistake sought to be rectified was a mistake apparent from the record. According to the Tribunal as the cost of the buses was shown at Rs. 1,53,72,599 in the balance-sheet at the time of the taking over of the undertaking by the assessee and in the same balance-sheet the depreciation reserve for those very assets was shown at Rs. 1,12,69,253, the actual cost to the assessee was to be the amount which would come after reducing the actual cost by the amount shown in the depreciation reserve. According to the Tribunal, redetermination of the written down value after looking into the earlier years' records came within the purview of Section 154 of the Act. For this purpose, the Tribunal relied on the decision reported in *Maharana Mills Private Ltd. v. ITO*¹ According to the Tribunal, the creation of depreciation reserve in the balance-sheet was another way of reducing the cost of the assets and this position was apparent on the face of the balance-sheet. According to the Tribunal, there could not be any valid controversy about the actual cost of those assets as they had to be determined on the basis of the balance-sheet as a whole and not on the basis of merely one entry at one side of the balance-sheet. On the basis of the aforesaid reasons, the Tribunal held that the order passed by the Income-tax Officer was within the scope of the provisions of Section 154 of the Act and the mistake could be rectified under that section. ;

Cases Referred.

1[1959] 36 ITR 350 (SC)