

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.6184 OF 2001

COMMR. OF INCOME TAX
lant(s)

Appel

VERSUS

M/S. RICHA & CO.
ndent(s)

Respo

(With office report)

Date : 17/04/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE DALVEER BHANDARI

For Appellant (s)

Mr. Rajiv Dutta, Sr.Adv.

Mr. Ranbir Chandra, Adv.

Mr. Arijit Prasad, Adv.

Ms. M.F. Humayunisa, Adv.

Mr. B.V.Balaram Das, Adv.

For Respondent (s)

Dr. S. Narayanan, Adv.

Mr. S.K. Khurana, Adv.

Mr. S.L. Aneja, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Civil Appeal is disposed of in terms of the signed order.

(N. Annapurna)
Court Master

(Kanwal Singh)
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6184 OF 2001

Commnr. of Income Tax

...Appellant(s)

Versus

M/s. Richa & Co.

...Respondent(s)

O R D E R

This appeal has been filed with the leave of the Court against

an order passed by the High Court in ITA No.149/2000, dated 19th

February, 2001 by which the High Court has confirmed the order

passed by the Income Tax Appellate Tribunal, Delhi Branch 'D' New

Delhi, (hereinafter referred to as 'the Tribunal') in ITA No.22(Del)/1994 relating to the Assessment Year 1989-90. The Tribunal by its order in the above-noted appeal set aside the findings recorded by the Commissioner of Appeals as well as the Income Tax Officer on the ground that the issue being debatable, the mistake could not be rectified, in exercise of its powers under jurisdiction under Section 154 of the Income Tax Act (for short, the Act), as a mistake apparent from the record.

The respondent-assessee is engaged in the business of ready-made garments. The sales made by it are within and partly outside the country. The assessee was served with a show cause notice dated 28th October, 1991 to show cause as to why the assessment made on 25th March, 1990 under Section 143(1)(a) of the Act be not amended as there was a mistake apparent from the record within the meaning of Section 154/155 of the Act. The assessee, in response to the notice, filed its detailed reply stating therein that the issues raised by the Income Tax Officer were debatable and the mistake could not be rectified in exercise of powers under Section 154/155 of the Act as it

was not "apparent from the record".

The Income Tax Officer rejected the claim of the assessee and confirmed the show cause notice. Aggrieved against the order passed by the Income Tax Officer, the assessee filed an appeal before the Commissioner (Appeals) who confirmed the order passed by the Income Tax Officer. Being aggrieved, the assessee filed a further appeal before the Tribunal. The Tribunal, after noticing the contentions of the parties, set aside the orders passed by the authorities below by recording the following reasons:

"We have considered the rival submissions and materials on file. We are of the view that the action of the AO in revising the deduction u/s 80 HHC by the impugned order u/s 154 was not proper and valid. On the facts and in the circumstances of the case, the reduction in the claim u/s 80 HHC could not have been made by the way of prima facie adjustment u/s 143(1)(a) and hence it could not be said that there was mistake apparent from record so far as the intimation u/s 143(1)(a) on this point was concerned. The question of relief u/s 80 HHC as in the present case was debatable issue which did not fall within the purview of prima facie adjustment u/s 143(1)(a). Such a debatable issue could be taken up by the AO in regular assessment proceedings under section 143(3) only. Keeping also in view the various circulars of CBDT and decisions of the

High Courts and ITAT, on the issue, we hold that impugned order u/s 154 was not justified and valid."

Apart from holding that on the facts and in the circumstances of the case, the reduction of the claim under Section 80 HHC could not have been made by way of prima facie adjustment u/s 142(1)(a), the Tribunal did not record any finding on the basis of the submissions made by the counsel for the parties. The Tribunal did not counter any of the reasons recorded by the Commissioner (Appeals) or the Authority in Original for setting aside the findings recorded by them. Aggrieved by the order of the Tribunal, the Revenue filed an appeal under Section 260-A of the Act before the High Court.

The High Court agreed with the view taken by the Tribunal and, while dismissing the appeal, held that the issue involved was a debatable issue which did not bring in the application of Section 154 of the Act and that only those errors which were self-evident from the record could be rectified in exercise of power under Section 154 of the Act and not otherwise. It is further held by the High Court that since debatable issues were involved, the Tribunal was right in concluding

that the mistake pointed out by the Revenue was not a mistake

"apparent from the record". Thus, this appeal by the Revenue.

Learned counsel appearing for the respondent-assessee took

us through the show cause notice as well as the reply filed by the

assessee and contended that the mistake was not a mistake apparent

from the record and since debatable questions of law and facts were

involved, the mistake could not be rectified in exercise of jurisdiction

under Section 154 of the Act. We find from the order of the Tribunal

that the Tribunal has not recorded any reasons for coming to these

conclusions except to say that the issues involved were debatable and

the same could not be rectified considered to be the mistakes apparent

from the record. The Tribunal should have recorded its independent

reasons for setting aside the orders passed by the Commissioner

(Appeals) as well as the Income Tax Officer.

For the reasons recorded above, we accept the appeal and set

aside the order of the High Court as well as that of the Tribunal. The

case is remitted back to the Tribunal for fresh consideration.

The Tribunal, while deciding the appeal, shall also take into

consideration two decisions of this Court cited before us by learned
counsel for the Revenue in M.K. Venkatachalam, ITO & Anr. Vs.
Bombay Dyeing & Mfg. Co.Ltd. (34 ITR 149 = AIR 1958 SC 875) and
Income Tax Officer, Alwaye Vs. Asok Textiles Ltd. (1961 (41) ITR 732
SC).

All contentions are left open to the parties. The Tribunal
should decide the appeal without being influenced by any of the
observations made by this Court in this order or by the High Court
and in the earlier order passed by the Tribunal.

The Civil Appeal is, accordingly, disposed of.

.....J.

(ASHOK BHAN)

.....J.

(DALVEER BHANDARI)

New Delhi,

April 17, 2007.