IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 269 of 2003 (O&M)

Date of Decision: 29.3.2016

Haryana State Coop. Supply and Marketing Federation Ltd., Panchkula

....Appellant.

Versus

Commissioner of Income Tax, Panchkula

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.**
**HON'BLE MRS. JUSTICE RAJ RAHUL GARG.**

PRESENT: Mr. Divya Suri, Advocate and
Mr. Sachin Bhardwaj, Advocate for the appellant.

Mr. Yogesh Putney, Advocate for the respondent.

**AJAY KUMAR MITTAL, J.**

1. This order shall dispose of a bunch of four appeals bearing ITA Nos. 269 to 272 of 2003 as according to the learned counsel for the parties, the questions of law and facts involved therein are identical. For brevity, the facts are being extracted from ITA No. 269 of 2003.

2. ITA No. 269 of 2003 has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 22.7.2003 (Annexure A-1) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (hereinafter referred to as "the Tribunal") in MA No. 3/CHANDI/99 in ITA No.

1326/Chandi/96 for the assessment year 1992-93, claiming the following substantial questions of law:-

a. Whether under the facts and circumstances of the case, the ld. Tribunal was justified in making a rectification u/s 254(2) on the basis of the amendment on dated 08.01.1999 by the Income Tax (Second Amendment) Act, 1998 with retrospective on the basis of amendment in Section 80P(2)(a)(iii) which issue as a question of law or interpretation of said Section 80P(2)(a)(iii) as unamended in the appellant case had become final on dated 13.5.1998 in the decision in the case of the appellant itself along with the Kerala State Cooperative Marketing Federation Ltd. and others reported in 231 ITR 814 and for which the necessary effect had already given by the ld. Tribunal on dated 21.09.1998 and 23.09.1998 for the respective years and also by the respondents?

b. Whether under the facts and circumstances of the case the issue having become final on the interpretation of the unamended provisions of law of Section 80P(2)(a)(iii) in case of the appellant itself whether the principles of res judicata shall not apply for the other years i.e. for the A.Y. 1990-91, 1992-93, 1993-94 and

1995-96 when issue involved the same and the facts remain the same?

c. Whether under the facts and circumstances of the case the ld. Tribunal has erred in law by initiating the proceedings for rectification and considering that the petitions filed are not of review but are of rectification and whether for the purpose of initiating, processing and finalizing the rectification on necessary legal requirements as laid down under the Income Tax (Appellate Tribunal) Rules, 1963, 34A has been followed, in the absence of which the necessary orders passed need to be quashed?

d. Whether proceedings initiated for rectification were mechanical and whether examining the same issue though already finalized and not is a case of review for which the Tribunal does not powers and hence unjurisdictional order?

e. Whether the learned Tribunal is correct in law in passing the rectification orders impugned in the present appeal when the very basis of the rectification proceedings was debatable before this Hon'ble High Court as well as Hon'ble Supreme Court of India at the time of initiation of proceedings of rectification and hence the proceedings are bad?

f. Whether under the facts and circumstances of the case, the Tribunal was justified in making rectification in view of retrospective amendment in Section 80P(2)(a)(iii) wherein the decisions of the Tribunal of dated 21.9.1998 for A.Y. 1995-96 and 1990-91 had become final which was not under dispute by way of an appeal u/s 260-A or reference u/s 256(1) by the respondents?

g. Whether the Tribunal could at all issue the notices for rectification of its earlier orders when the vires of the retrospective amendment of Section 80P(2)(a)(iii) was debatable before this Hon'ble Court in CWP No. 3242 of 1999?

h. Whether the judicial decisions having become final inter parties can be set at naught in view of the fact that Special Leave Petition filed by the Revenue against the decision of this Hon'ble Court in appellant's own case in CIT v. Haryana State Cooperative Supply and Marketing Federation Ltd. 182 ITR 53 (P&H) on the proposition and interpretation of provision of Section 80P(2)(a)(iii) that income arising from marketing of agricultural produce of its members (and not grown by its member as amended) is exempt having been dismissed by the Hon'ble Supreme Court vide its judgment

dated 13.5.1998 (231 ITR 814)?

3. A few facts necessary for disposal of the present appeal as mentioned therein are that Haryana State Coop. Supply and Marketing Federation Ltd. (in short "the HAFED") had been making purchase of foodgrain from its member societies as an agent of the Government and selling the same to Food Corporation of India (FCI). The income arising therefrom was exempt from tax under Section 80P(2)(a)(iii) of the Act, as held by this Court in the assessee's own case in **Commissioner of Income Tax v. Haryana State Coop. Supply and Marketing Federation Ltd. (1990) 182 ITR 53.** The appeal filed by the revenue bearing Civil Appeal No. 15430 of 1996 against the order of this Court was dismissed by the Supreme Court on 13.5.1998 while deciding the case of **Kerala State Coop. Supply and Marketing Federation Ltd. and others v. Commissioner of Income Tax, (1998) 231 ITR 814** (Annexure P-3) holding that the agricultural produce of its members as defined in Section 80P(2)(a)(iii) of the Act means that it should belong to its members and not that it should be produced by its members. The Tribunal, for the assessment years 1990-91 to 1993-94 in ITA Nos. 421/Chd/97, 562/Chd/95 and 1326/Chd/95, following the judgment of the Hon'ble Supreme Court in **Kerala State Coop. Supply & Marketing Federation Ltd's case (supra)** allowed deduction to the assessee for the income derived by it from marketing an agricultural produce of its members which belonged to them vide order dated 23.9.1998 (Annexure A-2). The Parliament by Income Tax (Second Amendment) Act, 1998 which came into force on 8.1.1999, amended the provisions of Section 80P(2)(a)(iii) of the Act with retrospective effect from 1.4.1968. However,

the revenue filed miscellaneous applications before the Tribunal after 8.1.1999 from which date the necessary amendment was brought by introducing the word "the marketing the agricultural produce grown by its members or" with retrospective effect, i.e. 1.4.1968 pleading that if the issue is not debatable, the same can be rectified and is a mistake apparent from the record under Section 254(2) of the Act. Notice dated 29.1.1999 (Annexure A-8) was issued in the applications for 19.2.1999. The assessee filed CWP No. 3242 of 1999 challenging the said amendment and this Court vide order dated 10.3.1999 (Annexure A-9) while issuing notice of motion stayed passing of the final order pursuant to the notice, Annexure A-8. The retrospective amendment was also challenged by the National Agricultural Cooperative Marketing Federation of India Ltd. before the Delhi High Court who upheld the said amendment. The Apex Court in **National Agricultural Cooperative Marketing Federation of India Ltd. v. Union of India and others (2003) 260 ITR 548 (SC)** upheld the retrospective amendment and dismissed the appeal. This Court vide order dated 16.5.2003 (Annexure A-10) passed in CM No. 9016 of 2003 and CWP No. 3242 of 1999 dismissed the writ petition in terms of **National Agricultural Cooperative Marketing Federation of India Ltd's case (supra).** In pursuance to the judgment of the Supreme Court in **National Agricultural Cooperative Marketing Federation of India Ltd's case (supra),** the Tribunal vide order dated 22.7.2003 (Annexure A-1) passed in MA Nos. 1 to 4 for the assessment years 1995-96 and 1990-91 to 1993-94 filed by the revenue under Section 254 of the Act, reversed its earlier order dated 23.9.1998 (Annexure A-2) and denied the deduction

which was earlier granted under Section 80P(2)(a)(iii) of the Act. Hence, the present appeals.

4. We have heard learned counsel for the parties.

5. The point for consideration in this appeal is as to whether the order of the Tribunal dated 23.9.1998 (Annexure A-2) could be rectified in view of retrospective amendment made by the Income Tax (Second Amendment) Act, 1998 effective from 1.4.1968.

6. The Tribunal while rejecting the contention of the assessee, following the decision of the Apex Court in the case of **J.M. Bhatia Appellate Assistant Commissioner of Wealth Tax and others v. J.M. Shah (1985) 156 ITR 474,** held that the order dated 23.9.1998 (Annexure A-2) could be rectified as there was mistake of law which was apparent on the record. The observation of the Tribunal reads thus:-

> "There is no dispute in this case that in view of the retrospective amendment u/s 80P(2)(a)(iii), the assessee is not entitled for deduction. We feel that when the law is amended with retrospective amendment, the fiction is that all the authorities under the statute must proceed on the basis that the law at the relevant time was the law as amended subsequently with retrospective effect. That being so, the legal fiction is apparently capable of being carried forward to hold that when the earlier order was passed, it was passed in contravention of the amended law which by fiction is deemed to be in force

at that time. This clearly is an error apparent on the face of the record. Section 80P(2)(a)(iii) has been amended with retrospective effect, i.e. w.e.f. 1.4.68. The apex court has upheld the constitutional validity of the retrospective amendment of the section in the case of National Agricultural Coop Marketing Federation of India Ltd. (supra). Once the law is made applicable with retrospective effect, it is deemed to be in existence from the date when it is made applicable and if an order is passed contrary to the amended law, there is a mistake of law crept in the order and such a mistake must be rectified. The apex court has also taken the same view in the aforesaid two decisions and the reasoning given therein is squarely applicable to the facts of the case before us. In view of the above discussions and the case law, we accept the plea of the Revenue and rectify our orders by which both the assessee were allowed deduction u/s 80P(2)(a)(iii) by holding that both the assessees are not entitled for deduction u/s 80P(2)(a)(iii) and to that extent our orders in aforesaid ITAs stand amended."

7. Further, Full Bench of this Court in **Commissioner of Income Tax v. Smt. Aruna Luthra [2001] 252 ITR 76** was considering the scope of power given under Section 154 which is analogous to Section 254 of the Act for rectification of any mistake apparent on the

record. It was held as under:-

> "The power given to the authority is wide. It can correct "any mistake" provided it is "apparent from the record". The first question that arises for consideration is – when a mistake can be said to be apparent from the record?
>
> The plain language of the provision suggests that the mistake should be apparent. It must be patent. It must appear ex facie from the record. It must not be a mere possible view. The issue should not be debatable.
>
> Mr. Sawhney contended that when the view taken by an authority is ex facie contrary to the decision of the jurisdictional High Court or a superior court, the case would fall within the mischief of section 154. However, Mr. Bansal submitted that while deciding a matter, an authority cannot anticipate the view that may be taken by the High Court or the Supreme Court on a subsequent date. If at the time of the passing of the order, the authority takes a particular view, which is not contrary to the existing interpretation of law, the provision of section 154 cannot be invoked.
>
> Apparently, the argument of Mr. Bansal appears to be attractive. If the issue of error in the order is to be examined only with reference to the date on which

it was passed, it may be possible to legitimately contend that it was legal on the date on which it was passed. The subsequent decision has only rendered it erroneous or illegal. However, there was no error much less an apparent error on the date of its passing. Thus, the provision of section 154 is not applicable. However, such a view shall be possible only if the provision were to provide that the error has to be seen in the order with reference to the date on which it was passed. Such words are not there in the statute. Resultantly, such a restriction cannot be introduced by the court. Thus, the contention raised by counsel for the assessee cannot be accepted.

There is another aspect of the matter. In a given case, on an interpretation of a provision, an authority can take a view in favour of one of the parties. Subsequent to the order, the jurisdictional High Court or their Lordships of the Supreme Court interpret the same provision and take a contrary view. The apparent effect of the judgment interpreting the provision is that the view taken by the authority is rendered erroneous. It is not in conformity with the provision of the statute. Thus, there is a mistake. Should it still be perpetuated? If the contention raised on behalf of the assessee were accepted, the result would be that even though the order of the authority is

contrary to the law declared by the highest court in the State or the country, still the mistake could not be rectified for the reason that the decision is subsequent to the date of the order.

Only the dead make no mistake. Exemption from error is not the privilege of mortals. It would be a folly not to correct it. Section 154 appears to have been enacted to enable the authority to rectify the mistake. The legislative intent is not to allow it to continue. This purpose has to be promoted. The Legislature's will has to be carried out. By placing a narrow construction, the object of the legislation shall be defeated. Such a consequence should not be countenanced."

8. In view of the above, no illegality or perversity could be found in the order dated 22.7.2003 (Annexure A-1) passed by the Tribunal. Accordingly, the substantial questions of law are answered against the assessee and in favour of the revenue. The appeals stand dismissed.

**(AJAY KUMAR MITTAL)**
**JUDGE**

**March 29, 2016**
gbs

**(RAJ RAHUL GARG)**
**JUDGE**