RECTIFICATION OF MISTAKES – WHETHER PERMISSIBLE IN CASE OF SUBSEQUENT CONTRARY DECISION?

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Section 154 of the Income Tax Act, 1961 provides that any mistake apparent from the record can be rectified by the assessing authority within expiry of four years from the end of the financial year in which the order sought to be amended was passed. Rectification can be done by the assessing authority on its own or on the same being brought to its notice by the assessee. Various judicial pronouncements have held that the expression "mistake apparent from record" would mean an obivious and patent mistake and on which no further elucidation and/or arguments are required. Any decision on debatable issue cannot be treated as a mistake apparent from record. However one important question that arises for consideration is can proceedings for rectification of an order be initiated on the basis of contrary view expressed in judgment delivered by the jurisdictional High Court or Supreme Court after the passing of the said order?

Unfortunately on this issue, there are contrary judgments by various high courts and the issue is quite open for the Hon'ble Supreme Court to put it to rest. I have tried to analyse various judicial pronouncements on this subject.

First point that arises for consideration is in case contrary view is expressed in a judgment delivered by jurisdictional High Court or Supreme Court after passing of a particular order, can it be said that there is "mistake" in that order?

Hon'ble Punjab and Haryana High Court in the case of Commissioner of Income Tax vs. Smt. Aruna Luthra [2001] 170 CTR 0073 (P&H) has held as under:

"In a given case, on 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 couldn't be rectified for the reason that the decision is subsequent to the date of the order."*

Similarly Hon'ble Kerala High Court in the case of Kil Kotagiri Tea And Coffee Estates Co. Ltd. Vs. Income-tax Appellate Tribunal And Others. [1988] 174 ITR 0579 (Ker) has held as under:

"An order of assessment, based upon an interpretation or application of law which is ultimately found to be wrong in the light of judicial pronouncements rendered subsequently, discloses a mistake apparent from the record".

This takes us to another argument whether the expression "any mistake apparent from the record" means the mistake has to be seen with reference to the date on which the order is passed or even a subsequent contrary view expressed in a judgment can be treated as a "mistake apparent from the record."

In this regard, Hon'ble Punjab and Haryana High Court in the case of Commissioner of Income Tax vs. Smt. Aruna Luthra [2001] 170 CTR 0073 (P&H) have held as under:

"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 than an apparent error on the date of its passing. Thus, provision of s. 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 is the statute. Resultantly, such a restriction cannot be introduced by the Court. Thus, the contention raised by the counsel for the assessee cannot be accepted".

However there are contrary judgments on this point wherein certain High Courts and Tribunals have held that subsequent Supreme Court decision or jurisdictional High Court decision settling a debatable issue would not make the issue undisputed and not debatable on the anterior date and hence rectification u/s.154 under such circumstances is not justified. Jiyajeerao Cotton Mills Ltd. vs. ITO [1981] 130 ITR 0710 (Cal)

This brings us to a very important question whether the judgment of a Court operates prospectively or retrospectively. In case it applies retrospectively, then it cannot be said that there was controversy on the issue on the anterior date and hence rectification u/s. 154 should be permissible. However in case it applies prospectively, then the argument that there was a controversy on the issue on the anterior date becomes stronger and in such a rectification would not be permissible.

Hon'ble Supreme Court in the case of M.A. Murthy vs. State of Karnataka [2003] 185 CTR 194 (SC) has held as under:

"Normally, the decision of this Court enunciating a principle of law is applicable to all cases ***irrespective its stage of pendency*** *because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception".*

It further states that *"It is for this Court to indicate as to whether the decision in question will operate prospectively.* ***In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision****. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling".*

Salmond on Jurisprudence, Tenth Edition, by Glanville L. Williams at page 189 states as follows :

"… the theory of case law is that a judge does not make law; he merely declares it; and the overruling of a previous decision ***is a declaration that the supposed rule never was law****. Hence, any intermediate transactions made on the strength of the supposed rule are governed by the law established in the overruling decision. The overruling is retrospective, except as regards matters that are res judicata, or accounts that have been settled in the meantime."*

Hon'ble Punjab and Haryana High Court have in the case of Commissioner of Income Tax Vs. Smt. Aruna Luthra [2001] 170 CTR 0073 (P&H) held as under:

"A Court decides a dispute between the parties. The cause can involve decision on facts. It can also involve a decision on a point of law. Both may have bearing on the ultimate result of the case. When a Court interprets a provision, it decides as to what is the meaning and effect of the words used by the legislature. It is a declaration regarding the statute. In other words, the judgment declares as to what the legislature had said at the time of the promulgation of the law. The declaration is – This was the law. This is the law. This is how the provision shall be construed."

Hon'ble Kerala High Court in the case of Kil Kotagiri Tea And Coffee Estates Co. Ltd. V. Income-tax Appellate Tribunal And Others. [1988] 174 ITR 0579 (Ker) has held as under:

When the court decides a matter, it does not make the law in any sense but all it does is that it interprets the law and states what the law has always been and must be understood to have been. Where an order is made by an authority, on the basis of a particular decision, the reversal of such decision in further proceedings will justify a rectification of the order based on that decision.

Hence from the abovementioned judicial pronouncements, it is amply clear that Courts do not bring any new law into existence, they merely interpret the law as it existed at the time of its enactment into the statute and such law is supposed to operate retrospectively, unless specifically specified by the Court in its order.

Finally, does this mean that any contrary view expressed in subsequent judgments by jurisdictional High Court or Supreme Court will call for rectification of the orders passed prior to it?

In this regard, recently Hon'ble Supreme Court in the case of Mepco Industries Ltd. Vs. CIT [2009] 319 ITR 208 (SC), has held as under:

– In case subsequent judgment lays down a principle of law, then it will be applicable across the board and based on the same rectification ,can be done;

– However in case subsequent judgment is based on the facts, then rectification cannot be done in respect of any orders passed prior to it, since that would tantamount to change of opinion and rectification cannot be done in case of change of opinion {in that particular decision, there was no conflict between both Supreme Court decisions and each one had ruled according to the nature of the subsidy involved in their cases.}

Hence from the abovementioned various judicial pronouncements, to me it appears, in matters relating to principle of law, proceedings for rectification of mistakes u/s. 154 can be initiated based on the contrary view taken by the jurisdictional High court or Supreme Court after the passing of that order. We will have to wait for the Supreme Court to finally decide this issue…