

CASE LAWS SMART NOTES

MAY 26

- CA Yash Khandelwal

1. Prakash D. Koli vs ITAT (Bombay High Court)

Issue

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Whether a Subsequent Decision of Supreme Court can be a ground for rectification vis 254 by ITAT?

Facts of the Case:

AO disallowed Employee's Contribution of EPF and ESI because it was deposited belatedly.

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Subsequently, ITAT allowed it as it is paid before due date of ROI

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Subsequently, Supreme Court in Checkmate Services Pvt. Ltd vs CIT, held that, deduction of Employee's contribution will be allowed only if paid before due date of relevant Act.

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Then, ITAT ne apna order Rectify kar diya vis 254 and disallow kar diya contribution ko.

Analysis and Conclusion:

High Court Held that: A Subsequent decision of Supreme Court, cannot by itself, form a Basis for Rectification vis 254. Subsequent decision of Supreme Court can not be considered Mistake apparent from record for ITAT.

2. Crown Electromechanical (P.) Ltd vs CIT (Calcutta High Court)

Issue

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Whether an inadvertent omission in the Income

Tax Return can be rectified by PCIT vis 264?

Facts of the Case

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Assessee filed his ROI declaring Total Income of 9.54 lakhs.

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But, inadvertently failed to include certain figures in P&L A/c.

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Because of this error, sec 143(1) intimation determined Total Income of 3.58 crores

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He filed Revision petition vis 264, ← But the due date of filing Revised return has now expired
but PCIT rejected it on the ground that only assessee is competent to alter return filed by Assessee.

Analysis and Conclusion:

High Court Held that: vis 264, the revisional authority is empowered to grant relief even in cases where mistake is committed by the Assessee.

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Bona fide mistakes are rectifiable vis 264.

(3) Pride Foramer SA vs CIT (SC)

Issue



Whether mere failure to obtain a Business Contract would be sufficient to hold that assessee has ceased its Business activities in India?

Facts of the Case

NR Foreign Co. → oil drilling activities were engaged thru from 1983 → 1993.

1993 → 1998
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fir 5 year koi Contract nahi mila
↓
1998
↓
15 year Contract mila

1993 ← → 1998

↓
Intervening years were

AO and CIT(A) disallowed Exp. and unabsorbed depn on the ground that No Business was carried on during such period

- it carried on Business Correspondence with ONGC
 - Submitted a Bid in 1996.
 - Incurred admin and audit expenses and Credited Interest on Income Tax Refund
- ↓
and claimed set off of expense and unabsorbed depn against the said Income and Filed Nil Ret.

Analysis and Conclusion:

Supreme Court Held that: This lean phase in Business must be termed as Lull in Business and not Cessation of the Business.

And, the NR. Assessee had continuous Business correspondence with ONGC and also made a Bid in 1996.

So, the appellant could be regarded as "Carrying on Business" in India and was therefore entitled to deduction of Business expense and unabsorbed depreciation.

(19) CIT vs Salesforce.com Singapore Pvt. Ltd.

Issue

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Whether subscription fees received for providing access to CRM software to Indian customer is taxable in India as Royalty or FTS?

Analysis and Conclusion

High court held that

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since copyright of the application is not transferred nor vested,

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the customer was merely given access to the application and take advantage of analytical attributes of software

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the subscription fees would not fall under Royalty or FTS as per India-Singapore DTAA.

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and therefore, the amount is not taxable in India.