

Blending of tea leaves doesn't amount to manufacturing; Sec. 154 rightly invoked to rectify the apparent mistake

Summary – The High Court of Calcutta in a recent case of Hindustan Lever Ltd., (the Assessee) held that Where Assessing Officer failed to apply binding precedent that blending of tea leaves was not manufacturing or production activity and had wrongly allowed deduction under section 80-I, same being an error apparent on face of record, assessment order was to be rectified

Facts

- The assessee-company set up new units at a tea garden for blending of tea and claimed deduction under section 80HH and 80-I/80-IA.
- The Assessing Officer allowed the assessee's claim under section 80-HH and 80-I/80-IA and made the assessment order.
- The revenue authorities invoked the provisions of section 154 and issued show cause notices in respect of the relevant assessment years on the strength of the ratio laid down in *Apeejay (P.) Ltd. v. CIT* [1994] 77 Taxman 208/206 ITR 367 (Cal.) in which it was held that the blending of different kinds of tea does not constitute manufacture or production of articles or things within the meaning of section 80-J. Hence, the revenue authorities opined that there were errors apparent on the face of the record in respect of the assessment orders in question.
- The revenue authority issued notice under section 154 for rectification of the impugned assessment order.

Held

- In the instant case, the assessment orders were passed subsequent to the law being settled in *Apeejay (P.) Ltd.'s case (supra)*. The assessment orders are not prior to *Apeejay (P.) Ltd.'s case (supra)* so as to attract the ratio of *Geo Miller & Co. Ltd. v. Dy. CIT* [2003] 262 ITR 237/[2004] 134 Taxman 552 (Cal.). In *CIT v. Tara Agencies* [2007] 162 Taxman 337/292 ITR 444 (SC) it was held in *Apeejay (P.) Ltd. (supra)* that the processing of tea would fall short of either manufacturing or production.
- On the other hand, *CIT v. Purtabpore Co. Ltd.* [1986] 159 ITR 362/26 Taxman 386 (Cal.) has held that a rectification under section 154 is permissible in order to bring the order of assessment in terms of an authoritative pronouncement of the Court. The Income-tax authorities are preparing to bring the orders of assessment in time in accordance with the ratio of *Apeejay (P.) Ltd. (supra)* through the process initiated by the impugned show cause notices. They are entitled to do so.
- Section 154 can be invoked to correct an error apparent on the face of the record. An order of assessment must be in tune with the law laid down by a binding precedent. The subject orders of

assessment not being in terms of the ratio of *Apeejay (P.) Ltd.'s* case (*supra*) contains errors. An error in an order not in consonance with a binding precedent is an error apparent on the face of the record.

- The writ petition is to be, accordingly, dismissed.