

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
Income Tax Appeal No. 34 of 2008

Commissioner of Income Tax and another.Appellants.
Versus
M/s Karjat Trade Place (P) Ltd.Respondent.
Mr. Hari Mohan Bhatia, Advocate for the appellants.

Coram : Hon'ble Barin Ghosh, C. J.
Hon'ble Servesh Kumar Gupta, J.

Barin Ghosh, C.J. (Oral)

What the Assessing Authority could do under Sections 147 and 148 of the Income Tax Act, it purported to do the same under Section 154 of the Act. The assessment was completed under Section 143(3) of the Act on 15th March, 2004. While the assessment was so concluded, the scope of explanation below Sub-Section (4) of Section 73 of the Income Tax Act, 1961 was not considered. In a notice given by the Assessing Officer, he held out to the assessee that the same was a mistake and, accordingly, the mistake is required to be rectified. The Assessing Officer, thereafter, purported to rectify the mistake and, in the process, reassessed the tax liability of the assessee. This order, purporting to have been passed under Section 154 of the Income Tax Act, which, in effect, permitted a reassessment, was successfully challenged by the assessee before the Appellate Authority. The Appellate Authority held erroneously that the Assessing Officer had no power to rectify an assessment order under Section 154 of the Income Tax Act at his own behest. There is no bar under Section 154 of the Income Tax Act to that effect. Further more, under Section 21 of the General Clauses Act, where by any Central Act or Regulation, a power to issue orders is conferred, then that power must be deemed to include power exercisable in the like manner and subject to the condition, if any, to add to, amend, vary or rescind any order so issued.

2. Therefore, power to effect amendment by way of rectification is inherent. We, accordingly, hold that the Appellate Authority was not just in contending that power to rectification cannot be exercised by the Assessing Authority on his own accord and the Tribunal also erred in confirming the said observation of the Appellate Authority. However, we do not interfere with either the order of the Appellate Authority by which the rectification order has been set aside or the order of the Tribunal, by which the order of the Appellate Authority has been confirmed, inasmuch as the order purporting to be an order of rectification was, in fact, not a rectification order, but was a re-assessment order.

3. The Appeal stands disposed of.

(Servesh Kumar Gupta, J.)
27.06.2013

(Barin Ghosh, C.J.)
27.06.2013

Rathour