(1994) 01 DEL CK 0057

In the Delhi High Court

Case No : IT Case No. 239 of 1984

Associated Agricultural Development Foundation APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 31-01-1994

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 256(2)

Citation : (1995) 80 TAXMAN 257

Hon'ble Judges : D.P Wadhwa, J;D.K. Jain, J

Bench : Division Bench

Advocate : G.L. Sanghi, D.N. Sawhney and Rajiv Nanda, for the Appellant; Rajendra, R.C. Pandey and D.C. Taneja, for the Respondent

Judgement

D.P. Wadhwa, J.—The assessee seeks to refer to this Court the following questions, stated to be questions of law, for its opinion. These questions have been set out in the application of the assessee filed u/s 256(1) of the income tax Act, 1961 (''the Act''):

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in reversing the order of the Commissioner of income tax (Appeals) dated 4-1-1983?

2. Whether the Tribunal is justified in relying on their subsequent order in ITA No. 3560 (Del.) /82 dated 14-2-1983 and findings therein, to reverse the order of the CIT (Appeals) dated 4-1-1983?

3. Whether the circumstances as existed on or before 4-1-1983 are relevant in deciding the appeal filed before the revenue in ITA No. 1368 (Del.) /83 or the Tribunal is justified in imposing its conclusions arrived at long after 4-1-1983, namely, on 14-2-1983?

4. Whether the Tribunal having found that, ''There would not be any difficulty in upholding the order of the CIT(A) which only set aside the assessment order...'' is justified in reversing the order of the CIT(A) dated 4-1-1983?

5. Whether the order of the CIT(A) dated 4-1-1983 is valid in law and in the circumstances and on the facts of the case?"

These questions, however, do not find mention in the application u/s 256(2) and the foremost objection of Mr. Rajendra is that since the questions set out in the present application are entirely different from the questions proposed in the assessee''s application u/s 256(1), this application is not maintainable. Mr. Sanghi, however, points out that there is a technical error inasmuch as the questions which have been reproduced in the application u/s 256(2) have inadvertently been picked up from earlier reference application (ITR No. 474 of 1983). It has been pointed out that when the assessment for the assessment year in question (assessment year 1978-79) was made by the Assessing Officer on 7-8-1981, the assessee filed an appeal before the Commissioner (Appeals) which was dismissed on 14-9-1982. A subsequent appeal to the Tribunal also met the same fate and the concerned order is dated 14-2-1983. In the meanwhile, however, the assessee filed a rectification application before the Commissioner (Appeals), who, vide order dated 4-1-1983, set aside the assessment. The assessee then filed an application before the Appellate Tribunal for recalling its order of 14-2-1983 in view of the fact that the Commissioner (Appeals) had set aside the assessment. The Tribunal did not agree. This led to filing of an application u/s 256(2) which ultimately resulted in ITR Nos. 175 and 176 of 1985. Then in the meanwhile the revenue also filed an appeal before the Tribunal against the order dated 4-1-1983 of the Commissioner (Appeals). Out of this, the present application u/s 256(2) arises and we agree with Mr. Sanghi that because of the earlier reference the mistake occurred and the questions on which reference as sought earlier were typed in the present application. It appears to us that there is a bona fide mistake as a matter of fact. In this view of the matter we allow the petitioner to bring on record an amended petition setting out the same questions as mentioned in the application u/s 256(1) which have been set out above.

2. After hearing the counsels for the parties, we are of the opinion that the following two questions of law arise and we, therefore, direct the Tribunal to draw up a statement of case and refer the two questions for opinion of this Court:

" 1. Whether on the facts and in the circumstances of the case, the Tribunal is justified in reversing the order of the Commissioner of income tax (Appeals) dated 4-1-1983?

2. Whether the Tribunal is justified in relying on their subsequent order in ITA No. 3560 (Del.) /82 dated 14-2-1983 and findings therein, to reverse the order of the CIT (Appeals) dated 4-1-1983?"

3. We further direct that after the statement of the case has been received, the reference will be heard along with ITR No. 474/83 and IT Reference Nos. 175-176 of 1985. No costs.

