(1989) 07 P&H CK 0084

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 66 of 1983

Bal Erectors APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 18-07-1989

Acts Referred:
Income Tax Act, 1961 — Section 144B, 251(1)

Citation : (1989) 180 ITR 625

Hon'ble Judges : S.S. Sodhi, J;Gokal Chand Mital, J

Bench : Division Bench

Advocate : B.S. Gupta and Sanjay Bansal, for the Appellant; L.K. Sood, for the Respondent

Judgement

Gokal Chand Mital, J.—The assessee filed a return showing an income of Rs. 80,300 for the assessment year 1977-78. The Income Tax Officer, by his order dated March 7,1980, assessed the income at Rs. 2,15,440. In doing so, the Income Tax Officer did not follow the procedure laid down in Section 144B of the Income Tax Act, 1961 (for short "the Act").

2. The assessee went up in appeal before the Commissioner of Income Tax (Appeals) and prayed that the assessment be cancelled as the provisions of Section 144B were not complied with. Instead of cancelling the assessment, the Commissioner of Income Tax (Appeals) set aside the assessment and remanded the case to the Income Tax Officer for de novo assessment after following the procedure laid down in Section 144B of the Act. The assessee still felt aggrieved and appealed to the Tribunal but failed. The Tribunal has referred the following question for opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessment as made by the Income Tax Officer, in total disregard of, and without complying with the provisions contained in Section 144B of the Income Tax Act, 1961, was not void and a nullity and, as such, was not liable to be annulled ?"

3. The main contention raised on behalf of the assessee is that since the procedure u/s 144B of the Act was not followed, the assessment made by the Income Tax Officer was null and void and the appellate authority could annul that order but could not set aside the same and refer the case back to the Assessing Officer for making a fresh assessment in accordance with the directions given by the appellate authority. Section 251(1) of the Act deals with the power/ jurisdiction of the appellate authority. The appellate authority has the power to confirm, reduce, enhance or annul the assessment ; or may set aside the assessment and refer the case back to the Income Tax Officer for making a fresh assessment in accordance with the directions given by the appellate authority. Therefore, on the facts of each case, the appellate authority has to consider whether it is a fit case for annulling the assessment or for setting aside the assessment. It cannot be disputed that if the assessment order is set aside, remand is permissible and this is what has been done by the appellate authority and the second appellate authority.

4. We had occasion to deal with a somewhat similar question in Income Tax Reference No. 60 of 1981 (Des Raj Kul Bhushan Vs. Commissioner of Income Tax,), decided on April 19, 1989. For the reasons recorded therein and for the aforesaid reasons, we find no error in the orders of the Commissioner of Income Tax (Appeals) and the Tribunal and answer the question in the affirmative, that is, in favour of the Revenue, leaving the parties to bear their own costs.