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(1992) 01 MP CK 0019

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 227 of 1991

Commissioner of Income Tax — APPELLANT

Vs

Abhay Kumar Jaswant Kumar — RESPONDENT

Date of Decision : 29-01-1992

Acts Referred:
Income Tax Act, 1961 — Section 256

Citation : (1992) 105 CTR 111 : (1992) 196 ITR 689

Hon'ble Judges : M.W. Deo, J;Faizanuddin, J

Bench : Division Bench

Advocate : P.K. Saxena, for the Appellant; S.S. Samvatsar, for the Respondent

Judgement

Faizanuddin, J.—This is an application u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. The material facts giving rise to this application, briefly, are as follows :

The assessee-respondent did not disclose the income from the firm, M/s. Mithanlal Ashok Kumar, and, therefore, the Income Tax Officer added the income of M/s. Mithanlal Ashok Kumar to the income of the assessee-firm and, as a consequence thereof, held that the assessee-firm could not be allowed to continue as a registered firm. In appeal, the Appellate Assistant Commissioner deleted the addition and directed continuation of registration. According to him, in a separate case of Mithanlal Ashok Kumar, the Tribunal had held that the said Mithanlal Ashok Kumar is an independent assessee. Aggrieved by this order, the Department preferred an appeal before the Income Tax Appellate Tribunal. The contention of the Department was that the case of Mithanlal Ashok Kumar was pending before the Supreme Court. The Tribunal, however, rejected the appeal holding that the pendency of the petition for special leave to appeal did not come in the way of rejection of the appeal. Thereafter, the Department requested the Tribunal to refer the matter to this court on the following questions :

" (i) Whether, on the facts and in the circumstances of the case, the Income Tax

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Appellate Tribunal was right in dismissing the Department''s appeal when the decision in Mithanlal Ashok Kumar was pending before the Supreme Court ?

(ii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in dismissing the Department''s appeal against the order of the Appellate Assistant Commissioner allowing continuation of registration when the decision of the Hon''ble Madhya Pradesh High Court in Commissioner of Income Tax Vs. Mithalal Ashok Kumar, was not accepted by the Department and the SLP was pending?"

3. Learned counsel for the Department contended that the Tribunal ought to have awaited the decision of the Supreme Court and ought not to have rejected the appeals due to the decision of the High Court in Commissioner of Income Tax Vs. Mithalal Ashok Kumar, . He also contended that the finding of the Tribunal in the other cases would not make any difference on the facts of the case and that the addition was wholly justified and so also the cancellation of the registration.

4. Having heard learned counsel for the parties and after going through the record, we are of the view that the Tribunal was not right in refusing to refer the aforesaid questions to this court. It is, therefore, necessary to call upon the Tribunal to make a reference as urged on behalf of the Department.

5. We, therefore, direct the Income Tax Appellate Tribunal to make a reference to this court on the questions mentioned in paragraph 2 of this order.

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