
(1988) 05 PAT CK 0020

In the Patna High Court

Case No : Taxation Case No. 131 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Anardei Devi

RESPONDENT

Date of Decision : 02-05-1988

Acts Referred:

Income Tax Act, 1961 — Section 143, 251, 256(1), 263, 263(1)

Citation : (1988) 173 ITR 69 : (1988) 41 TAXMAN 245

Hon'ble Judges : Uday Sinha, J; B.N. Agrawal, J

Bench : Division Bench

Advocate : B.P. Rajgarhia and S.K. Sharan, for the Appellant; None, for the Respondent

Judgement

1. This is a reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter to be referred as "the Act"), at the instance of the Revenue. In this reference, we are concerned with the assessment year 1968-69. The history of this case is more important than the point referred to us for our consideration.

2. The Central Board of Direct Taxes came out with a scheme to see that assessments were completed quickly. There was, however, a reservation in the scheme in regard to the assessment of minors and ladies. In regard to them, it was stated that the assessment was not to be done in terms of Section 143(1) of the Act. Assessment of ladies and minors has to be done effectively after proper enquiry. The Income Tax Officer, however, assessed the assessee in terms of the scheme u/s 143(1) of the Act. The assessments were made for the assessment years 1965-69 to 1973-74. The Commissioner of Income Tax, finding that the assessments of the assessee were against the law and against the scheme propounded by the Central Board of Direct Taxes, set aside the orders of assessment and remanded the matter to the Income Tax Officer for fresh enquiry and for fresh assessments in terms of Section 143(3) of the Act. The assessee, being aggrieved by the order of the Commissioner passed u/s 263 of the Act, appealed to the Income Tax Appellate Tribunal. While the appeal was pending

before the Tribunal, the Income Tax Officer, in pursuance of the orders of the Commissioner u/s 263(1) of the Act, passed fresh assessment orders adding certain sums as income of the assessee. The assessee, being aggrieved by the second order of assessment by the Income Tax Officer, filed an appeal before the Appellate Assistant Commissioner of Income Tax. Before the appeal could be disposed of by the Appellate Assistant Commissioner, the Tribunal allowed the appeal of the assessee against the order of the Commissioner. The order of the Tribunal having been passed in favour of the assessee, the Appellate Assistant Commissioner, while hearing the appeal against the quantum assessment, allowed it on the ground that the Commissioner's order had been set aside by the Tribunal.

3. The Appellate Assistant Commissioner having allowed the appeal, the Commissioner of Income Tax filed an appeal before the Tribunal. The Tribunal dismissed the appeal observing that as earlier held since the Commissioner had no jurisdiction to act in terms of Section 263(1) of the Act, the appeal of the Revenue thus failed. The Revenue, being aggrieved by the order of the Tribunal, moved the Tribunal for reference to this court and that is how the present reference is before us.

4. The question referred to us is "whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in upholding the order of the Appellate Assistant Commissioner setting aside the assessment order of the Income Tax Officer u/s 144/263 of the Income Tax Act, 1961, for the assessment year 1968-69.?"

5. The Commissioner had earlier moved the Tribunal for making a reference u/s 256(1) of the Act in respect of the order of the Tribunal cancelling the order of the Commissioner passed u/s 263(1) of the Act. Thus, references were made in respect thereof. Those were Taxation Cases Nos. 46 to 51 of 1978 (Commissioner of Income Tax Vs. Smt. Anardei Devi,). Those references were disposed of by this court on September 12, 1986. Therein it was opined by this court that the Commissioner was justified in setting aside the order of the Income Tax Officer. The references were thus answered in favour of the Revenue and against the assessee. The order of the Tribunal thus setting aside the order of the Commissioner u/s 263(1) of the Act was set at naught. The position now is that the order of the Appellate Assistant Commissioner had been upheld by the Tribunal on the ground that the Commissioner had no jurisdiction to set aside the order of the Income Tax Officer. That position does not prevail now. The opinion of the High Court being that the Tribunal was not right in setting aside the order of the Commissioner, the order of the Tribunal dismissing the Revenue's appeal against the order of the Appellate Assistant Commissioner on the very same ground has now become erroneous. It is thus obvious that the order of the Tribunal upholding the order of the Appellate Assistant Commissioner by which the latter has set aside the order of the Income Tax Officer was not right and it cannot be sustained. The question referred to us thus must be answered in

favour of the Revenue and against the assessee. The Appellate Assistant Commissioner will now proceed to hear the appeal and dispose of it in accordance with law as if the order of the Tribunal did not exist. After the disposal of the appeal by the Appellate Assistant Commissioner, it will be open to the parties to seek such remedy as they may be entitled to and as they may find.

6. In the circumstances mentioned above, the present reference is answered in favour of the Revenue and against the assessee. However, there will be no order as to costs. Let a copy of this order be transmitted to the Assistant Registrar, Income Tax Appellate Tribunal, Patna, in terms of Section 260 of the Act.