

(2002) 07 GUJ CK 0005

In the Gujarat High Court

Case No : IT Reference No. 180 of 1989 3 July 2002 & Income-tax Reference No. 180 of 1989

Commissioner of Income Tax

APPELLANT

Vs

Arunaben Sumankumar

RESPONDENT

Date of Decision : 03-07-2002

Acts Referred:

Income Tax Act, 1961 — Section 132, 143(1), 263

Citation : (2002) 177 CTR 470 : (2003) 259 ITR 386

Hon'ble Judges : M.S. Shah, J;K.A. Puj, J

Bench : Division Bench

Advocate : Tanvish Bhatt, for the Appellant;

Judgement

M.S. Shah, J.—In this reference at the instance of the Revenue, the following question is referred for our opinion in respect of the assessment year 1983-84 :

"Whether the Tribunal is right in law in setting aside the order made by the Commissioner of Income Tax u/s 263 of the Income Tax Act, 1961 ?"

2. We have heard Mr. Tanvish Bhatt, learned standing counsel for the Revenue. Though served, none appears for the respondent-assessee.

3. The assessee is an individual. For the assessment year 1983-84, the assessee filed her return of income on September 29, 1983, at Rs. 26,020. The Income Tax Officer accepted the return and made the assessment u/s 143(1) of the Act, 1961. However, on a perusal of the record of the assessment in the case of the assessee for the year under consideration, the Commissioner of Income Tax noticed that the assessee had filed her return of net wealth for the first time for the assessment year 1983-84 on September 29, 1983, showing gold ornaments weighing 656 grams valued at Rs. 91,988. The assessee had claimed that the said gold ornaments were received by her at the time of her marriage. The Commissioner of Income Tax noticed that there had been a search u/s 132 of the Act at the residential premises of Bharatkumar Ishwarlal, brother-in-law of the

assessee, on March 19, 1983. It was after the said search that the assessee had filed her return of wealth on September 29, 1983, showing the said ornaments as belonging to her. The Commissioner found that the Income Tax Officer had not conducted any enquiry into the source of acquisition of gold ornaments by the assessee as shown by her wealth-tax return and, therefore, the assessment order as passed by the Income Tax Officer u/s 143(1) without conducting necessary enquiry was erroneous inasmuch as the same was prejudicial to the interests of the Revenue. The Commissioner of Income Tax has, therefore, invoked his jurisdiction u/s 263 of the Act and after hearing the assessee and feeling not satisfied with the explanation offered by the assessee, set aside the assessment made by the Income Tax Officer and directed him to reframe the same according to law.

4. In second appeal, the Tribunal held that the Commissioner could not have taken action u/s 263 of the Act in the case of the assessee on the basis of the records in the cases of other persons, no matter how closely they were related to the assessee. Holding thus, the Tribunal set aside the order of the Commissioner. Hence, this reference at the instance of the Revenue.

5. At the hearing of this reference today, Mr. Tanvish Bhatt, learned standing counsel for the Revenue, has invited our attention to the decision of the Supreme Court in Commissioner of Income Tax, Bangalore Vs. Shree Manjunatheaware Packing Products and Camphor Works, , wherein the apex court has examined the legislative amendment to Section 263 including the amendment made with retrospective effect for amplifying the scope of the term "record". In the said decision, the Supreme Court did not accept the narrow interpretation of the word "record" which had appealed to the Calcutta High Court in the case of Ganga Properties Vs. Income Tax Officer, and the apex court held as under (page 63) :

"The revisional power conferred on the Commissioner u/s 263 is of wide amplitude. It enables the Commissioner to call for and examine the record of any proceeding under the Act. It empowers the Commissioner to make or cause to be made such enquiry as he deems necessary in order to find out if any order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. After examining the record and after making or causing to be made an enquiry, if he considers the order to be erroneous, then he can pass the order thereon as the circumstances of the case justify. Obviously, as a result of the enquiry he may come into possession of new material and he would be entitled to take that new material into account. If the material, which was not available to the Income Tax Officer when he made the assessment could thus be taken into consideration by the Commissioner after holding an enquiry, there is no reason why the material which had already come on record though subsequently to the making of the assessment cannot be taken into consideration by him. Moreover, in view of the clear words used in Clause (b) of the Explanation to Section 263(1), it has to be held that while calling for and examining the record of any proceeding u/s 263(1),"it is and it was open to the

Commissioner not only to consider the record of that proceeding but also the record relating to that proceeding available to him at the time of examination."

6. Following the aforesaid decision, we are of the view that there is nothing in the provisions of the Income Tax Act, 1961, particularly Section 263 of the Act, or in the aforesaid pronouncement of the apex court which would require us to accept the narrow view which appealed to the Tribunal that the record must be of the assessee concerned and that the Commissioner had no power, jurisdiction and authority to take action u/s 263 of the Act, in the case of the assessee on the basis of the records in the cases of other persons.

7. Our answer to the question is, accordingly, in the negative, i.e., in favour of the Revenue and against the assessee.

8. The reference accordingly stands disposed of with no order as to costs.