(2000) 07 MP CK 0060

In the Madhya Pradesh High Court

Case No : M.C.C. No. 204 of 1996

Commissioner of Income Tax	APPELLANT
Vs	
Ashok Kumar Jain	RESPONDENT

Date of Decision : 28-07-2000

Acts Referred:
Income Tax Act, 1961 — Section 143(2), 148, 153(2), 256(1)

Citation : (2001) 250 ITR 610 : (2001) 118 TAXMAN 493

Hon'ble Judges : Nirmal Kumar Jain, J;A.M. Sapre, J

Bench : Division Bench

Advocate : R.L. Jain, for the Appellant; Anand Soni and R.C. Mehra, for the Respondent

Judgement

1. Heard Shri R. L. Jain, learned counsel for applicant (Revenue), and Shri Anand Soni with Shri R. C. Mehra, learned counsel for non-applicant, assessee.

2. This is an application made by the Revenue, praying for review of the order dated March 6, 1996, passed by a Division Bench of this court in M. C. C. No. 18 of 1992, on a reference made under, Section 256(1) of the Income Tax Act, 1961.

3. The question of law referred to this court for answer was as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessment made u/s 143(3) read with Section 143(2)(b) of the Income Tax Act, 1961, was barred by limitation in view of Section 153(2) when the return was filed in response to a notice u/s 148 served on September 29, 1983 ?"

4. While answering the aforesaid question in the affirmative and in favour of the assessee, this court in para. 4 of the order referred to Sub-section (2) of Section 153 of the Income Tax Act as it stands after the amendment of 1987, which was brought into force with effect from April 1, 1989. However, it is pointed out by learned counsel for the applicant (Revenue) that Sub-section (2) of Section 153 as it stood before the said amendment, provided for a limitation period of four

years as against the limitation of two years now provided under the amended provision.

5. Notice u/s 148 ibid was served on September 29, 1983, on the assessee. The original assessment was completed on July 30, 1985. Obviously, therefore, the assessment in question was made prior to the amendment of Section 153(2) ibid. The present provision of Section 153(2) ibid could not, therefore, be taken into consideration while answering the reference. It appears that this position regarding amendment escaped the notice of the court and was also not brought to the court''s notice by learned counsel appearing for the parties. The mistake is, therefore, apparent on the face of the record, necessitating review of the order.

6. Accordingly, we allow the review application and recall the order dated March 6, 1996, passed in M. C. C. No. 18 of 1992. The said M. C. C. shall now be placed before the appropriate Bench for answering the reference on the merits. The present M. C. C., thus, stands disposed of as stated aforesaid.