

(1981) 08 GAU CK 0012

In the Gauhati High Court

Case No : Civil Rule No. 1 (M) of 1981 and 2 (M) of 1981

Commissioner of Income Tax

APPELLANT

Vs

Basanta Kumar Agarwalla and Another

RESPONDENT

Date of Decision : 19-08-1981

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 256(2), 259, 260, 64(1)

Citation : (1981) 25 CTR 117 : (1983) 140 ITR 418

Hon'ble Judges : T.C. Das, J;K. Lahiri, J

Bench : Division Bench

Advocate : G.K. Talukdar and D.K. Talukdar, for the Appellant; R.P. Agarwal and R.L. Jain, for the Respondent

Judgement

Lahiri, J.—We propose to dispose of the rules by a common order as they involve common questions of law and fact. These are applications u/s 256(2) of the I.T. Act, for short "the Act", requiring the Income Tax Appellate Tribunal, Gauhati, to refer to the High Court the following purported question of law arising out of the orders of "the Tribunal".

"Whether, on the facts and in the circumstances of the case, and on a proper construction of Section 4 of the Indian Partnership Act, 1932, Section 2(23) and Section 64 of the Income Tax Act, 1961, the assessee, individual (.....*1) was not the partner of the firm (.....*2) and whether the share of profits arising in the hands of the minor sons of the assessee from the said firm is not rightly includible in the assessment of the assessee, individual u/s 64(1)(ii) of the Income Tax Act, 1961 ? "

2. [We have omitted the name of the assessee *1 and the name of the partnership firm *2 as they are different in the two different cases].

3. The Tribunal has refused to refer the question on two grounds : First, the income of the minors could not be included in the computation of the total income of the assessee in respect of their individual assessments. The learned

Tribunal has held that the income of the minors derived from the partnership firms in which the assesseees as kartas of their respective "HUFs" were partners could not be included in the computation of the total income of the assesseees in their individual assessments. The conclusions were reached on a perusal of the provisions of Section 64(1) of the Act. Secondly, the view taken by the learned Tribunal found support in some reported decisions of the High Courts. The Tribunal reached a firm conclusion that no question of law arises out of the order in both the cases. On such refusal the Revenue has preferred this application u/s 256(2) of the Act.

4. In our opinion, while considering an application u/s 256(2) of the Act we must bear in mind that the Tribunal is the primary authority to refer a question of law arising out of its order. It is a high-powered authority composed of members having special experience and expertise. In the fitness of its status, it always welcomes a decision (of the High Court) because such a determination of the High Court on any question of law gives a stamp of finality and assists, aids and helps the Tribunal not only to decide the case in hand but also future cases of the same or similar nature. This apart, the High Court exercising jurisdiction u/s 256(2), ought to bear in mind that it does not exercise the appellate power and jurisdiction while hearing a reference under Sections 259 and 260 of the Act. The jurisdiction of the High Court is purely advisory. Apart from the assessee and the Revenue, the Tribunal is also a beneficiary of a firm decision of the High Court, on a question of law. As such, when one of the beneficiaries refuses to make a reference, the High Court ought to be slow and circumspect to disturb the decision of the Tribunal. However, if the Tribunal makes a patent error or fails to exercise the jurisdiction vested in it by Section 256(1) of the Act the High Court must step in and exercise its power u/s 256(2) of the Act.

5. Bearing in mind the above principles let us proceed to Consider the contentions. The common ground in both the applications is a general and vague statement that a question of law does arise out of the order of the Tribunal and nothing more.

6. It has been urged by Mr. G.K. Talukdar, learned standing counsel for the Revenue, that the cases involve an interpretation of Section 4 of the Indian Partnership Act, 1932, and Sections 2(23) and 64(1)(ii) of the Act.

7. Our attention has been drawn to Section 256(1) of the Act where it is said that the Tribunal shall draw a statement of the case and refer any question of law arising out of the order of the Tribunal. It has been urged that the language is mandatory and imperative. However, the learned standing counsel has failed to show that there is any averment anywhere in the application that the decision reached by the learned Tribunal was erroneous, wrong or against the known principles of the provisions of the laws: The sum and substance of the contention is that as the Tribunal has referred Section 64 of the Act in its orders, it invariably follows that the cases involve interpretation of the said provision as well as Section 4 of the Partnership Act, 1932.

8. We are unable to appreciate the contention of the Revenue. Although Section 256(2) has been couched in a mandatory form to indicate as if the Tribunal were obliged to refer any question of law arising out of such order, it does not mean that the Tribunal is bound to refer a case in which it has merely referred to certain provisions of law and determined the point on the basis of the said provisions. In our opinion, a "point of law" cannot "be equated with the expressions "question of law". The question must be a disputed or disputable question of law. The object of a reference is to get a decision from the High Court on a problematic or debatable question and not an obvious and simple point of law, although somehow the determination is somewhere linked up with a provision of law. The meaning of the term "question", in the context, means a subject or point of investigation, examination or debate, a problem; as a delicate or doubtful question. In our opinion, the Tribunal is obliged to refer only a question of law which calls for investigation, examination, debates or when it is a dubious problem. However, if a point of law decided by the Tribunal is positive, certain, definite and sure, there is no obligation on the part of the Tribunal to refer the matter, as the point cannot be termed as a question of law. When a decision is apparently correct and there is no scope for any debate or dispute or difference, it does not fall within the expression "a question of law", it may be stated as "an obvious conclusion reached". It is not every point of law that is required to be referred by the Tribunal to the High Court. When an answer to the question is simple, obvious and self-evident, it cannot be termed as a question of law and the Tribunal is not bound to refer such a question. The conclusion reached by us finds ample support in *Commissioner of Income Tax, Punjab Vs. Chander Bhan Harbhajan Lal*, *Mathura Prasad Vs. Commissioner of Income Tax, Uttar Pradesh*, *Commissioner of Income Tax, West Bengal Vs. Indian Mica Supply Co. P. Ltd.*, and *Commissioner of Gift Tax, Bombay Vs. Smt. Kusumben D. Mahadevia*,

9. When a decision on a point of law apparently does not show any problem or debate on the point, it cannot be a question of law. Even if a point of law does arise out of the decision of the Tribunal but the answer to the point is self-evident and obvious or when the question is of an academic nature or where it has been concluded by a judgment of the Supreme Court or the High Court under which the Tribunal exercises its jurisdiction, the Tribunal would be justified not to refer such a point of law. But a reference cannot be refused merely because a different High Court has taken the same view of the question of law as the Tribunal: vide *Commissioner of Income Tax, North Eastern Region Vs. Saharia Krishivan Pratisthan Ltd.*, where one of us (Lahiri J.), speaking for the court, expressed the above view.

10. In Civil Rules Nos. 18(M) and 19(M) of 1979 decided on June 5, 1981, (*CIT v. R. D. Sharma*) (see p. 423 *infra*--Appx. I) one of us (T.C. Das J.), speaking for the court, has taken the view that when the decision reached by the Tribunal on a question of law is obvious or self-evident, the Tribunal need not refer the question. We have no hesitation in arriving at the conclusion that when the

answer to a point of law is too obvious or self-evident no reference u/s 256 of the Act need be made.

11. In the instant case, the conclusion reached by the learned Tribunal on the interpretation of law is correct and there is no, nor can there be any, debate on the point as to the answer. In the application asking for a reference the Commissioner has not questioned the correctness of the decisions. The learned standing counsel has not been able to show that the point of law decided by the learned Tribunal is erroneous or at least requires a second look.

12. In the result, we hold that the learned Tribunal was justified in refusing the question and the applications stand dismissed. There is no order as to costs.