(1989) 02 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 345 of 1986

Commissioner of Income Tax APPELLANT

Vs

Bhandari Capacitors (P.) Ltd. RESPONDENT

Date of Decision : 01-02-1989

Acts Referred:
Income Tax Act, 1961 — Section 149, 263

Citation : (1989) 178 ITR 375 : (1989) 44 TAXMAN 6

Hon'ble Judges : G.G.Sohani, Acting C.J.;S.K. Dubey, J

Bench : Division Bench

Advocate : R.C. Mukati, for the Appellant; Chaphekar, for the Respondent

Judgement

G.G. Sohani, Actg. C.J.

1. By this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that the reassessment made by the Inspecting Assistant Commissioner (Assessment) became invalid ignoring the fact that the decision of the Tribunal setting aside the order of the Commissioner of Income Tax u/s 263 has not been accepted and reference application is pending ?"

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

For the assessment year 1977-78, the assessee was assessed by the Income Tax Officer but the order of assessment was set aside by the Commissioner of Income Tax u/s 263 of the Act. Thereafter, as directed by the Commissioner of Income Tax, the Inspecting Assistant Commissioner (Assessment) passed a fresh order of assessment. Aggrieved by that order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). Meanwhile, aggrieved by the order passed by the Commissioner of Income Tax u/s 263 of the Act, the assessee had also preferred an appeal before the Tribunal which was allowed and the order passed by the Commissioner of Income Tax u/s 263 of the Act was set aside. Hence, the Commissioner of Income Tax (Appeals) set aside the order of reassessment passed by the Inspecting Assistant Commissioner in pursuance of the order passed by the Commissioner of Income Tax u/s 263 of the Act. Thereafter, the Revenue preferred an appeal before the Tribunal but that appeal was dismissed. Aggrieved by the order passed by the Tribunal, the Revenue sought reference and it is at the instance of the Revenue that the aforesaid question of law has been referred to this court for its opinion.

3. Having heard learned counsel for the parties, we have come to the conclusion that this reference must be answered in the affirmative and against the Revenue. The basis of the order of reassessment passed by the Inspecting Assistant Commissioner was the direction given by the Commissioner of Income Tax u/s 263 of the Act. That direction having been set aside by the Tribunal, the order of reassessment passed by the Inspecting Assistant Commissioner was liable to be set aside. Learned counsel for the Revenue contended that the decision of the Tribunal setting aside the order passed by the Commissioner of Income Tax u/s 263 of the Act is the subject-matter of a reference which is pending before this court. If that reference is answered in favour of the Revenue, then the Tribunal would pass such order as would be necessary to dispose of the case conformably to the judgment of this court. But till then, it cannot be held that the Tribunal was not justified in upholding the order passed by the Commissioner of Income Tax (Appeals).

4. For all these reasons, our answer to the question referred to this court is in the affirmative and against the Revenue. In the circumstances of the case, parties shall bear their own costs of this reference.