(1994) 02 GUJ CK 0022

In the Gujarat High Court

Case No : Income-tax Reference No. 42 of 1982

Commissioner of Income Tax APPELLANT

Vs

C.D.R. Laxmidevi RESPONDENT

Date of Decision : 23-02-1994

Acts Referred:
Income Tax Act, 1961 — Section 154

Citation : (1994) 122 CTR 246 : (1995) 211 ITR 858

Hon'ble Judges : R.K. Abichandani, J;M.B. Shah, J

Bench : Division Bench

Advocate : B.J. Shelat, for the Appellant; D.A. Mehta, for the Respondent

Judgement

R.K. Abichandani, J.—The Income Tax Appellate Tribunal, Ahmedabad Bench ""B"", has referred u/s 256(1) of the Income Tax Act, 1961,

the following questions to this court for our opinion :

1. Whether the Income Tax Appellate Tribunal was on the facts and in the circumstances of the case, right in law in holding that special surcharge

should be levied on the basis of net unearned income and not on the basis of gross unearned income ?

2. Whether the Appellate Tribunal was right in law in holding that since the question of levy of surcharge on unearned income required

interpretation of the expression ''amount of unearned income included in the total income'' it cannot be said that the matter was free from argument

and debate and consequently rectification proceedings were bad in law ?

3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in confirming the view of the Appellate

Assistant Commissioner in holding that this was not a fit case for invoking the provisions of section 154 of the Income Tax Act, 1961 ?

4. Whether the Appellate Tribunal was right in law in holding that special surcharge was leviable on unearned income of Rs. 66,632 in the

assessment year 1967-68 in question ?

2. The relevant assessment years are 1967-68 and 1968-69. The assessee derived income from dividend, interest from business of shares. The

original assessment for the assessment year 1968-69 was finalised by the Income Tax Officer on December 15, 1971, and was rectified by an

order dated November 22, 1975, u/s 154 of the Act to correct the mistake whereby special surcharge on unearned income was charged on the

net total income of Rs. 53,412 while the unearned income included in the total income was Rs. 1,08,946. In the same way for the assessment year

1967-68, the special surcharge was levied on the net income of Rs. 66,632 instead of on Rs. 1,12,168. The Income Tax Officer did not accept

the contention of the assessee that the special charge has to be worked out with reference to the net total income and not the gross total income,

particularly as the dividend income was to be treated as earned income in the hands of the dealers of shares. According to the Income Tax Officer,

surcharge was to be charged on the unearned income included in the total income as per the Finance Act for the assessment year 1967-68. The

Appellate Assistant Commissioner setting aside the Income Tax Officer''s order held that there was no mistake apparent on record which could be

said to be obvious or patent and the question involved being a complicated one, could not be rectified u/s 154 of the Act. On the merits, the

Appellate Assistant Commissioner came to the conclusion that special surcharge was not leviable on the gross unearned income included in the

total income of the year, but only on the unearned income to the extent of Rs. 53,412 for the assessment year 1968-69 and Rs. 66,632 for the

assessment year 1967-68.

3. In the appeal filed by the Revenue, the Tribunal following its earlier decision in the case of M. K. S. Shivraj Sinhji of Gondal in Income Tax

Appeals Nos. 1651 and 1652 decided on September 14, 1978, confirmed the view taken by the Appellate Assistant Commissioner. Hence, the

above reference at the instance of the Revenue.

4. The questions covered in this reference stand concluded by the decision of this

court in Commissioner of Income Tax Vs. M.K.S. Shivrajsinhji,

. In that case, while considering similar questions in the context of the provisions contained in paragraph A of Part I of the First Schedule to the

Finance (No. 2) Act, 1967, this court held as under (at page 456) :

It is clear that the surcharge, which is leviable under the said provision is to be levied on the unearned income, which is included in the total income

on which the Income Tax is levied in accordance with the specified rates. Therefore, in order to determine the surcharge which is leviable, we have

first to find out what is the total income on which Income Tax is levied. The next step would be to find out what is the unearned income which is

included in this total income. In other words, what is required to be found out is the unearned income component in the total income determined for

the purpose of levy of Income Tax. The component of total income obviously cannot exceed the total income, otherwise it would cease to be a

component thereof. In other words, the unearned income which is to be deemed to be the total income for the purpose of levy of surcharge cannot

exceed the total income on which the Income Tax is levied.

5. Considering the question as to whether in that case there was justification for the rectification proceedings u/s 154, this court held that the

question which was raised was debatable or it would require long-drawn arguments in order to come to a conclusion that there is a mistake in the

computation of surcharge. Therefore, as held by the Supreme Court in T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs.

Volkart Brothers, Bombay, the mistake cannot be said to be a mistake apparent on the face of the record so that it could be rectified in exercise of

the powers u/s 154 of the Act.

6. We are of the opinion that the Tribunal was right in holding that there was no mistake apparent on the face of the record which could have been

rectified by the Income Tax Officer u/s 154, and that the matter was not free from argument or debate. The Tribunal correctly relied upon the view

taken by it earlier in M. K. S. Shivrajsinhji''s case which has been accepted by this court in Commissioner of Income Tax Vs. M.K.S.

Shivrajsinhji, .

7. In this view of the matter, the questions referred to us are answered in the affirmative, in favour of the assessee and against the Revenue.

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

