

(1995) 11 MP CK 0027

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No's. 133 of 1987, 228 of 1988 and 234, 235, 236, 237, 238, 239 and 246 of 1989

Commissioner of Income Tax

APPELLANT

Vs

Devi Ahilyabai Holkar Educational Trust

RESPONDENT

Date of Decision : 29-11-1995

Acts Referred:

Income Tax Act, 1961 — Section 254(2), 256

Citation : (1996) 218 ITR 191

Hon'ble Judges : S.B. Sakrikar, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : D.D. Vyas, for the Appellant; J.W. Mahajan, for the Respondent

Judgement

A.R. Tiwari, J.—These nine reference applications, as noted above, filed by the applicant (Commissioner of Income Tax, Bhopal) u/s 256(2) of the Income Tax Act, 1961 (for short, "the Act"), seek direction in each application to the Income Tax Appellate Tribunal to state the case and refer the common questions of law for our opinion as proposed therein. The questions of law are as under :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that the Commissioner of Income Tax (Appeals) was right in directing to make de novo assessment and to examine afresh the claim of the assessee ?

(2) Whether when the validity of the transfer is being disputed before the Supreme Court by the Department, the Tribunal is justified in upholding the Commissioner of Income Tax (Appeals) directions that substantive assessment be made in the hands of the transferee-assessee ?"

2. Identical factual matrix in each application is in a narrow compass. The assessee is a public charitable trust. By a deed of trust dated December 18, 1973, the Princess Usha Trust transferred its properties to the assessee-trust. In the case of the Princess Usha Trust, the Income Tax Officer held that the transfer

of properties to the assessee-trust was invalid and the assessee-trust was not protected on that basis. In the case of the Princess Usha Trust, the point was agitated by the assessee in this court in Miscellaneous Civil Case No. 75 of 1982 decided on March 19, 1983 Princess Usha Trust Vs. Commissioner of Income Tax, In the case of the assessee-trust, the Commissioner of Income Tax (Appeals) set aside the assessment order dated May 19, 1982, for de novo assessment with a direction that the assessment requires to be reframed keeping in view the changed legal position. Against this order, the applicant filed second appeals before the Tribunal. The assessee filed cross-objections. The Tribunal dismissed the appeals as well as cross-objections holding that the matter was fully covered by the decision in Princess Usha Trust v. CIT [1985] 144 ITR 808 . The applicant then filed reference applications u/s 256(1) of the Act seeking a statement of the case and reference to this court for opinion proposing the aforesaid two questions of law. The Tribunal, however, dismissed the applications in view of the position settled by the aforesaid decision. These nine applications pertain to the different years from 1978-79 to 1981-82.

3. We have heard Shri D.D. Vyas, learned counsel for the applicant/Revenue, and Shri J.W. Mahajan, learned counsel for the non-applicant/assessee, in all these nine cases.

4. The only question for consideration is whether any reference can be claimed on the ground of pendency of a case in the Supreme Court. It is contended that the order passed in the case of Princess Usha Trust Vs. Commissioner of Income Tax, which is the linchpin of the decision rendered by the Tribunal for the aforesaid assessment years, is under challenge before the apex court and as such the questions are required to be referred.

5. Shri Mahajan contended that the aforesaid ground seeking reference is not proper as appeal to the apex court would not give any rise to the ground for seeking the reference. Reliance is placed on Commissioner of Wealth-tax Vs. Smt. Usha Devi (Lrs. of H.H. Maharaja Yeshwant Rao Holkar),

6. In the aforesaid decision, it is held as under (at page 77) :

"Having heard learned counsel for the parties, we are of the view that the case is fully covered by the aforesaid judgment of this court in Miscellaneous Petition No. 282 of 1981 Smt. Usha Devi (Legal representative of H.H. Maharaja Yeshwantrao Holkar) Vs. Wealth-tax Officer, Special Investigation Circle-I and Others,),The Tribunal, in the face of the aforesaid judgment of this court in the said case, has rightly arrived at the conclusion that no referable question of law arises out of the order dated May 15, 1987, passed by the Tribunal.

It was urged by Shri Samvatsar, learned counsel for the Department, that the matter is now pending before the Supreme Court. As has been held by a Division Bench of the Madras High Court in Commissioner of Income Tax Vs. Carborandum Universal Ltd., , the High Court is justified in rejecting a petition for directing a reference and the fact that the same issue is pending before the

Supreme Court is no ground for directing such a reference.

In this case particularly, this court has also held in Commissioner of Wealth-tax Vs. Princess Usha Trust, , that where any matter was pending before the Supreme Court, it could not be a valid ground to call upon the Tribunal to make a reference as the same point had already been decided by the court between the same parties.

As the point of controversy stands decided by this court in favour of the assessee and the Tribunal having followed the decision of this court, we hold that no referable question arises in this case. In the circumstances, the petitions fail and are accordingly rejected."

7. It is noticed that the aforesaid decision supports the contention of the non-applicant. Nothing substantial is urged to persuade us to take a different view in the matter.

8. Faced with the fate of these reference applications in the light of the aforesaid decision in the case of Commissioner of Wealth-tax Vs. Smt. Usha Devi (Lrs. of H.H. Maharaja Yeshwant Rao Holkar), , counsel for the applicant, in the interest of the Revenue, submitted that liberty be granted to the Tribunal to invoke Section 254(2) of the Act in case the aforesaid decision Princess Usha Trust Vs. Commissioner of Income Tax, , the basis of the decision of the Tribunal in all these cases, is reversed by the Supreme Court for appropriate action in conformity with the decision and the provisions of the Act on the same lines as is ordered by this court in Miscellaneous Civil Case No. 103 of 1987 (CIT v. Shri Govindram Seksaria Charity Trust [1996] 218 ITR 126) decided on November 28, 1995. The aforesaid provision gives power to the Tribunal to rectify any mistake within four years from the date of the order. This submission is not opposed by counsel for the non-applicant.

9. Ex consequenti, we reject these reference applications as inutile and futile but without any order as to costs. However, even while doing so, we grant liberty to the Tribunal to invoke Section 254(2) of the Act, if the situation so arose and the law so permitted.

10. This order shall be retained in Miscellaneous Civil Case No. 133 of 1987 and a true copy each shall be placed in the record of the connected cases, as noted above.

11. Counsel's fee on each side shall be Rs. 750 in each case, if certified.