
(1996) 02 MP CK 0048

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 84 of 1990

Commissioner of Income Tax

APPELLANT

Vs

Dhariwal Sales Enterprises

RESPONDENT

Date of Decision : 09-02-1996

Acts Referred:

Income Tax Act, 1961 — Section 142(2A), 142(2C), 153

Citation : (1997) 137 CTR 365 : (1996) 221 ITR 240

Hon'ble Judges : A.K. Mathur, C.J.; S.K. Kulshreshtha, J

Bench : Division Bench

Advocate : A. Adhikari, for the Appellant; B.L. Nema, for the Respondent

Judgement

1. This is an Income Tax reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the I. T. Act"), at the instance of the Revenue and the following questions of law have been referred by the Tribunal for answer of this court, which read as under :

" (1) Whether, on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was correct in holding that the assessment made on September 3, 1985, was barred by limitation ?

(2) Whether the Income Tax Appellate Tribunal was correct in holding that in computing the period of limitation for the purpose of Section 153 of the Income Tax Act, 1961, "the date on which the assessee furnishes the report of such audit" in Sub-clause (iii) of Explanation 1 to that section must be interpreted to include the "date on which the assessee expresses his inability to furnish such audit report" ?"

2. The brief facts giving rise to this reference are thus : The assessee is a firm. The assessment year in question is 1978-79, the relevant previous year being Diwali, 1977. The original assessment for the said assessment year was completed on September 24, 1981, u/s 143(3) read with Section 144B of the Income Tax Act. Against this assessment order, the assessee preferred an appeal

before the Commissioner of Income Tax (Appeals), Jabalpur, who set aside the order passed by the Income Tax Officer and directed the Income Tax Officer to make the assessment de novo.

3. The Income Tax Officer, while making the assessment de novo as per the directions of the Commissioner of Income Tax (Appeals), invoking the provisions of Section 142(2A) of the Income Tax Act, directed the assessee on March 30, 1985, to get its accounts audited and to furnish a report of such audit by June 30, 1985. On the assessee's request, the Income Tax Officer extended the time for submission of audit report till August 31, 1985. But the assessee by his letter dated August 21, 1985, informed the Income Tax Officer that the chartered accountant appointed to conduct the audit "had shown his inability to finalise the audit as he was very busy in other audits". The said letter was delivered to the Income Tax Officer on August 22, 1985. The Income Tax Officer completed the assessment u/s 144 of the Income Tax Act on September 3, 1985.

4. The assessee then took up the matter in appeal before the Commissioner of Income Tax (Appeals) against the order dated September 3, 1985, passed by the Income Tax Officer and it was urged before the Commissioner of Income Tax (Appeals) that the assessment is barred by limitation. This contention of the assessee was negated by the Commissioner of Income Tax (Appeals).

5. Aggrieved against the said order of the Commissioner of Income Tax (Appeals), the assessee approached the Tribunal and the Tribunal after considering the matter, found that the assessment made by the Income Tax Officer on September 3, 1985, was barred by time and hence, the Tribunal reversed the findings of the Commissioner of Income Tax (Appeals) and cancelled the order of the Income Tax Officer being barred by time. Hence, the Revenue approached the Tribunal for making a reference before this court and the Tribunal has referred the aforesaid questions of law for answer of this court.

6. We have heard learned counsel for the parties and perused the records. It is unfortunate that the matter was first decided by the Commissioner of Income Tax (Appeals) on September 8, 1982. There is no justification on account of the Income Tax Officer to wait till August 30, 1985, and then the Income Tax Officer woke up for assessment. Be that as it may, the Income Tax Officer invoked his jurisdiction u/s 142(2A) of the Income Tax Act on March 30, 1985, for asking the assessee to submit the audit report by June 30, 1985 ; but the report could not be submitted. Then, an extension of time was granted for submitting the audit report up to August 31, 1985, But, before that, the assessee informed the Income Tax Officer by his letter dated August 21, 1985, that the auditor had expressed his inability to finalise the audit because he is busy in other audits. The said letter was received by the Income Tax Officer on August 22, 1985. Therefore, on August 22, 1985, the Income Tax Officer had come to know about it that the audit report is not likely to come. Then in that case, the Income Tax Officer should have decided the matter on August 22, 1985, itself ; but instead of that, the Income Tax Officer decided the matter on September 3, 1985.

According to Section 142(2C) of the Income Tax Act, the Income Tax Officer is only entitled to give extension up to the time which is spent for obtaining the copy of the audit report. When the Income Tax Officer has been informed on August 22, 1985, that the audit report is not likely to come within the time prescribed, i.e., 180 days, then in that case, there was no justification to have decided the matter on September 3, 1985. The provisions of the Income Tax Act have to be construed specifically. Being negligent on the part of the authorities cannot be countenanced for construing the provisions of limitation. In the present case, the Income Tax Officer has a maximum period specified for obtaining the report of the audit up to 180 days u/s 142(2C) as provided in the proviso to this section. That period automatically stood curtailed when the Income Tax Officer was informed that the report was not likely to be received and as such the Income Tax Officer could have legitimately taken the period spent for obtaining the copy of the audit report up to the time when the intimation was given by the assessee that the report is not likely to come. In these circumstances, in this view of the matter, the assessment decided on September 3, 1985, is definitely beyond the period of limitation and, as such, the view taken by the Tribunal appears to be justified. Hence, we answer this reference against the Revenue and in favour of the assessee.