(1996) 08 MP CK 0080

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No''s. 31 to 34 of 1993, 27th August, 1996.

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

DIGVIJAY TRADERS. — RESPONDENT

Date of Decision : 27-08-1996

Acts Referred:
Income Tax Act, 1961 — Section 132, 185, 186, 256

Citation : (1996) 136 CTR 166

Hon'ble Judges : A. R. Tiwari, J

Bench : Division Bench

Judgement

A. R. TIWARI, J. :

On request of the counsel for the parties, these four Misc. Civil Cases are heard as connected matters and are being disposed of by this common order.

2. Factual matrix lies in a narrow compass.

(a) Misc. Civil Cases Nos. 31 & 33 of 1993 :

The applicant (CIT, Bhopal) has filed applications under s. 256(2) of the IT Act, 1961 (for short the Act) seeking direction to the Tribunal to state the cases and refer the undernoted common question, labelled as of law, arising out of the order dt. 31st Jan., 1992 passed by the Tribunal in ITA Nos. 339/Ind/90 and 400/Ind/90 after rejection of the applications, presented under s. 256(1) of the Act, registered as RA Nos. 103/Ind/1992 for asst. yr. 1984-85 and 105/Ind/1992 for asst. yr. 1985-86. The assessee was granted registration for the asst. yr. 1982-83 on 4th March, 1983 under s. 185 of the Act. For the asst. yr. 1983-84, the firm was granted registration again under s. 185 by the AO on 10th Jan., 1984. On 23rd Aug., 1984, action was initiated under s. 132 of the Act. Certain papers showed secret profits made by the assessee. Such secret profits were not found to have been distributed amongst the partners in these two years. The assessee had admitted that secret profits were earned. The AO, therefore, issued a show-cause notice on 4th Aug., 1986 calling upon the assessee to show cause as to why registration granted for the two years be not cancelled as provided under s. 186 of the Act as the condition for distribution of profits was violated. The assessees explanation was not found satisfactory. The AO, therefore, cancelled the registration under s. 186 of the Act. On appeal, CIT(A) set aside the order of the AO with a direction to AO to make fresh order. The Tribunal dismissed the appeal of the Revenue. The Revenue then filed the applications under s. 256(1) of the Act. The applications were dismissed. These applications are, thus, filed under s. 256(2) of the Act. The undernoted common question is proposed in these two applications :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in setting aside the orders of the AO under s. 185(1)(b) of the IT Act ?"

(b) Misc. Civil Cases Nos. 32 & 34 of 1993 :

The applicant (CIT, Bhopal) has filed applications under s. 256(2) of the Act seeking direction to the Tribunal to state the cases and refer the undernoted common question, labelled as of law, arising out of the order dt. 31st Jan., 1992 passed by the Tribunal in ITA Nos. 208/Ind/90 and 211/Ind/90 after rejection of the applications, presented under s. 256(1) of the Act, registered as RA Nos. 102/Ind/1992 for asst. yr. 1982-83 and 103/Ind/1992 for asst. yr. 1983-84 on 10th Aug., 1992. In these cases the additional facts are that against the order passed by the CIT(A), the Department as well as the assessee filed appeals before the Tribunal. The Tribunal set aside the order of the CIT(A) and cancelled the order of the AO under s. 186 holding that the genuiness of the firm for which registration was granted earlier was not doubted by the AO and that the discovery of secret income would not constitute the ground for cancellation of the registration under s. 186. Aggrieved by the order of the Tribunal, the applicant filed applications under s. 256(1) of the Act. The applications were rejected. The applicant then filed these applications under s. 256(2) of the Act. In these two Misc. Civil Cases, the under noted common question is proposed :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the order under s. 186 of the Act particularly when the secret profits have not been distributed amongst the partners according to the profit sharing ratio ?"

3. We have heard Shri Vivek Sharan, learned counsel for the applicant/Revenue and Shri S. K. Jain, learned counsel for the non-applicant/assessee in all the aforesaid Misc. Civil Cases.

4. The Tribunal on applications declined to state the cases and refer the questions as under :

"The Tribunal on appreciation of the facts and circumstances of the case on record reached the conclusion that the genuineness of the firm was not at all questioned and, therefore, the registration should not have been cancelled. This is obviously a finding of fact and no referable question of law arises.

The AO did not permit continuation of registration of the firm for the asst. yrs. 1984-85 and 1985-86. On appeal, the CIT(A) held that the appeal did not lie for the asst. yr. 1985-86. So far as the asst. yr. 1984-85 is concerned, he set aside the order for fresh decision.

On appeal the Tribunal held that the appeal did lie before the CIT(A). The Tribunal, therefore, set aside the order of the CIT(A) for the asst. yr. 1985-86. The Tribunal sustained the order of the CIT(A) for the asst. yr. 1984-85. It directed the AO to consider the applications of the assessee for the asst. yrs. 1984-85 and 1985-86 afresh in the light of its order dt. 31st Jan., 1992 in ITA Nos. 208 to 211/Ind/90. From these facts it is obvious that no referable question of law arises from the order of the Tribunal relating to the asst. yrs. 1984-85 and 1985-86."

The case relating to asst. yr. 1982-83 & 1983-84 was also not found fit for reference.

5. In Commissioner of Income Tax Vs. Khanna Theatre, it is held by this Court that as per provisions of IT Rules, 1962, prior distribution of profits or losses among the partners is not compulsory. The question presented in the aforesaid case was answered against the Revenue and in favour of the assessee.

6. In view of the legal position and the order of the Tribunal, as extracted above, we are satisfied that these cases do not involve referable questions of law. The direction is based on appreciation of facts and features. In Commissioner of Income Tax (Central), Calcutta Vs. Ashoka Marketing Ltd., and in Commissioner of Income Tax, Andhra Pradesh Vs. Kotrika Venkataswamy and Sons, , it is held that the conclusion based on appreciation of facts does not give rise to any question of law.

7. In view of the aforesaid position, we reject these applications but with no orders as to costs.

8. Counsel fee for each side is, however, fixed at Rs. 750, if certified.

9. Retain this order in the record of Misc. Civil Case No. 31 of 1993 and place its copy each in the records of the connected Misc. Civil Cases, as particularised above, for ready reference.