(1996) 02 MP CK 0036

In the Madhya Pradesh High Court

Case No : MCC No. 63 of 1989 & Miscellaneous Civil Case No. 63 of 1989

Commissioner of Income Tax APPELLANT

Vs

D.M. Bhatia Industry RESPONDENT

Date of Decision : 20-02-1996

Acts Referred:
Income Tax Act, 1961 — Section 40

Citation : (1996) 222 ITR 482

Hon'ble Judges : N.K. Jain, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : D.D. Vyas, for the Appellant; G.M. Chaphekar and Subhash Samvatsar, for the Respondent

Judgement

A.R. Tiwari, J.—In compliance with the directions issued by this court in M. C. C. No. 95 of 1985-CIT v. D.M. Bhatia (Industry) [1988] 171 ITR 539 on January 8, 1988, the Tribunal has referred the undernoted question of law arising out of the orders passed by the Tribunal in I. T. A. Nos. 1288 and 1289/(Ind) of 1982 (at page 540) :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the amount of commission paid by the assessee to Vallabh Textile and Wool Traders, Ludhiana, a proprietary concern of one of the partners of the assessee-firm, was deductible in computing the total income of the assessee and that the provisions of Section 40(b) of the Income Tax Act, 1961, were not attracted ?"

2. Briefly stated, the facts of the case are that the assessee is a registered firm carrying on the business in the name and style of "Bhatia Industries", Indore. At its head office, it had business in wholesale of cloth. It has, at its branch office, a concern for manufacturing woollen yarn out of waste. The assessee was originally assessed on the basis of regular assessment. Later, the Income Tax Officer reopened the assessments on the ground that on the failure of the assessee to disclose fully and truly all material facts, income amounting to Rs.

55,000 and Rs. 82,622 in the form of payment of commission, respectively, for the assessment years 1972-73 and 1973-74 had escaped assessment. The payment of this commission had been made by the assessee to a concern known as Vallabh Textile and Wool Traders, Ludhiana, owned by Shri L.D. Bhatia, one of the partners of the assessee-firm. The disallowance of this payment was made by the Income Tax Officer by invoking the provisions of Section 40 of the Income Tax Act, 1961 (for short, "the Act") (annexure "A"). The assessee filed first appeal before the Appellate Assistant Commissioner who upheld the order of the Income Tax Officer (annexure "B"). The assessee then took up the matter in second appeal before the Tribunal. The Tribunal held that the payment of commission to the proprietary concern of Shri L.D. Bhatia, partner of the assessee-firm, was not hit by the provisions of Section 40(b) of the Act. The Tribunal, therefore, directed that the amount of commission added back by the Income Tax Officer be deleted from the total income of the assessee (annexure "C"). The applicant felt dissatisfied by the order and filed applications u/s 256(1) of the Act which were registered as R, A. Nos. 138 and 139/(Ind) of 1984, arising out of the aforesaid orders of the Tribunal. These applications were rejected. The applicant, then, took recourse to Section 256(2) of the Act in this court. This court made the directions in M.C.C. No. 95 of 1985 (see [1988] 171 ITR 539). The Tribunal, then, referred the aforesaid question of law.

3. We have heard Shri D.D. Vyas, learned counsel for the applicant, and Shri G.M. Chaphekar, learned senior counsel, with Shri Subhash Samvatsar, for the non-applicant-assessee.

4. Counsel for the non-applicant submitted that the Tribunal itself has taken the same view in I. T. A. No. 860/(Ind) of 1981 for the assessment year 1976-77 filed by the assessee and in I. T. A. No. 924/(Ind) of 1982 for the assessment year 1976-77 filed by the applicant-Department and as such, the aforesaid question deserves to be answered against the Department and in favour of the assessee. He submitted that the aforesaid two orders for later years have attained the finality. According to him, this is necessary to maintain the uniformity and consistency.

5. Shri Vyas, in the face of the aforesaid orders, was unable to urge anything substantial in the case.

6. Section 40(b) of the Act deals with the question of payment of salary, bonus, commission or remuneration in the case of any firm assessable as such. The provisions of Section 40(b) of the Act were not available in the case of commission paid by the assessee to Messrs. Vallabh Textile and Wool Traders, Ludhiana.

7. In Commissioner of Income Tax Vs. Kikabhai Premchand, , it is held by the apex court that in revenue cases regard must be had to the substance of the transaction rather than to its mere form.

8. It is in the area of legislative ambiguities, yet not receding, that courts have to

fill gaps, dear doubts and mitigate hardships. In the words of Judge Learned Hand, spoken in Cabell v. Markhan [1945] 148 F 2d 737, 739, we get enough light to locate correct path :

" It is one of the surest indexes of a mature and developed jurisprudence .... to remember that statutes always have some purpose or object to accomplish whose sympathetic and imaginative discovery is the surest guide to their meaning."

9. In Parashuram Pottery Works Co. Ltd. Vs. Income Tax Officer, Circle I, Ward A, Rajkot, , pertaining to the Income Tax Act, it is held that (headnote of Parashuram Pottery Works Co. Ltd. Vs. Income Tax Officer, Circle I, Ward A, Rajkot,) :

"At the same time, it must be borne in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity."

10. In view of the position that the Tribunal has taken the same view for subsequent years which has become final and in view of the aforesaid position of law, we are satisfied that the Tribunal was right in holding that the amount of commission paid by the assessee to Messrs. Vallabh Textile and Wool Traders, Ludhiana, a proprietary concern of one of the partners of the assessee-firm was deductible in computing the total income of the assessee and that the provisions of Section 40(b) of the Act were not attracted in the facts and circumstances of the case.

11. Accordingly, we answer the question in the affirmative, i.e., in favour of the assessee and against the Department.

12. This reference application is thus, decided in terms indicated above, but without any orders as to costs. Counsel fee for each side is fixed at Rs. 750, if certified.

13. A copy of this order be transmitted to the Tribunal for information in accordance with rules.