(2003) 03 MAD CK 0012

In the Madras High Court

Case No : Tax Case No. 267 of 1999

Commissioner of Income Tax APPELLANT

Vs

Dr. K. Ramachandran RESPONDENT

Date of Decision : 19-03-2003

Acts Referred:
Income Tax Act, 1961 — Section 263(1)

Citation : (2004) 187 CTR 654

Hon'ble Judges : R. Jayasimha Babu, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : T. Ravikumar, for the Appellant; R. Yashod Vardhan, for the Respondent

Judgement

K. Raviraja Pandian, J.—The question referred to us is as follows :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in cancelling the order u/s 263 passed by the CIT?

The assessment year is 1986-87.

2. In respect of the assessment proceedings for the above assessment year, the assessee declared the cost of construction of a cinema theatre viz.,

''Mahalakshmi Palace'' at Rs. 10,53,000. The value declared by the assessee was based on the registered valuer''s report. The AO accepted the

value of the theatre as declared by the assessee and completed the assessment. Later on, the CIT on the premise that on enquiry he came to know

that the assessee had availed a loan of Rs. 47 lakhs from Jayalakshmi Leasing Company declaring the value of the theatre at Rs. 27,40,000, after

giving the assessee an opportunity of being heard, set aside the order of assessment and directed the AO to make fresh assessment after

verification and enquiry. The assessee questioned the order of the CIT in appeal before the Tribunal by contending that the invocation of the

provision u/s 263 of the Act by the CIT is not sustainable in law, since there was no information relating to any proceedings under the IT Act

available before the AO which show that the assessment as framed was erroneous and prejudicial to the Revenue.

3. It was also contended that raising of the loan by the assessee from Jayalakshmi Leasing Company was not part of the proceedings under the IT

Act and the same is extraneous to the assessment proceedings. Hence, the invocation of the power u/s 263 of the Act is bad in law.

4. The Tribunal after considering the issue accepted the contention of the assessee and set aside the order of the CIT. Hence, the reference as

stated above.

5. When the matter is taken up for orders, learned standing counsel appearing for the IT Department has relied on the decision of the Supreme

Court in the case of CIT v. Shree Manjunathesware Packing Products & Camphor Works (1998) 231 ITR 53 to contend that Section 263 of the

IT Act, 1961, enables the CIT to call for and examine the records of any proceedings under the Act and pass such orders thereon as the

circumstances of the case justify, including an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh

assessment, if he considers that the order passed by the AO is erroneous and prejudicial to the interests of the Revenue.

6. By the Finance Act, 1988, an Explanation was substituted w.e.f. 1st June, 1988, to Section 263 of the Act. The Explanation was further

amended by the Finance Act, 1989, and the definition of the term ""record"" was explained. It has been provided in the Explanation that ""record

shall include and shall deemed always to have included all records relating to any proceeding under the Act available at the time of the examination

by the CIT. The apex Court further made it clear that it could not be said that the correct and settled legal position, with respect to the meaning of

the word ""record"" would mean the record which was available to the ITO at the time of passing of the assessment order, but would include the

records available with the CIT at the time of passing of the order by the CIT.

7. He also relied on the decision of this Court in the case of Commissioner of Income Tax Vs. M.N. Sulaiman, wherein this Court followed the

decision of the Supreme Court in the case of Manjunathesware (supra) and further held that the Explanation added to Section 263(1) of the Act in

the year 1988 has to be regarded as declaratory, since this Court has considered the case which was of the year prior to the amendment. This

position of law has not been disputed by the learned counsel for the assessee. If the above rulings of the apex Court and of this Court is applied to

the facts of the present case, the order of the CIT cannot be said to be without jurisdiction.

8. In view of the binding decision of the Supreme Court as well as this Court referred to above, the question referred to has to be answered and is

answered in the negative and in favour of the Revenue and against the assessee.