
(1985) 07 MP CK 0019

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 201 of 1981

Commissioner of Income Tax

APPELLANT

Vs

Durga Prasad Rajaram Aratiya

RESPONDENT

Date of Decision : 16-07-1985

Acts Referred:

Income Tax Act, 1961 — Section 256(2)

Citation : (1986) 57 CTR 255 : (1986) 160 ITR 328

Hon'ble Judges : K.K. Adhikari, J; J.S. Verma, J

Bench : Division Bench

Advocate : B.K. Rawat, for the Appellant; B.L. Nema, for the Respondent

Judgement

J.S. Verma, J.—At the instance of the Department, a direction was given by this court u/s 256(2) of the Income Tax Act, 1961, to the Tribunal, as a result of which, the Tribunal has stated the case and referred to this court for decision, the following question of law, namely :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in directing the Income Tax Officer to determine the amount of peak credit considering the sum of Rs. 34,000 alleged to be withdrawn from the bank as assessable in 1961-62 ?"

2. The assessee is a partnership firm carrying on business in grains and kirana on wholesale basis and adhat. It also does banking business. For the assessment year 1961-62, it filed a return declaring an income of Rs. 52,226, but the same was determined at Rs. 1,18,606 u/s 23(3) of the Indian Income Tax Act, 1922. In computing this income, the Income Tax Officer made certain additions and disallowed certain claims for deduction. One item of addition made by the Income Tax Officer was the sum of Rs. 30,000 as income from undisclosed sources. The assessee appealed to the Appellate Assistant Commissioner, who partly allowed the assessee's appeal. With regard to the addition of Rs. 30,000 as income from undisclosed sources, the alternative contention of the assessee

for its set-off against the intangible addition of Rs. 34,000 made for the assessment year 1960-61 was accepted by the Appellate Assistant Commissioner and the assessee was granted relief in respect of this item of addition made by the Income Tax Officer.

3. Aggrieved by the order of the Appellate Assistant Commissioner, the assessee as well as the Department preferred appeals to the Tribunal. The Tribunal disagreed with the deletion of the addition of the aforesaid item of Rs. 30,000 as income from undisclosed sources. The Tribunal accepted the Department's contention with regard to the item of Rs. 30,000 on the ground that the Appellate Assistant Commissioner had given benefit to the assessee to that extent on the basis that the item of Rs. 34,000 withdrawn by the assessee from its accounts in the Central Bank of India, Sagar, on March 26, 1960, but recorded in its books of account as made on March 18, 1960, was assessable as income during the assessment year 1960-61, when, in fact, the Tribunal had held in an earlier order that this item of Rs. 34,000 was assessable as income for the assessment year 1961-62 and not 1960-61. Ultimately, the Tribunal set aside the order of the Appellate Assistant Commissioner in respect of four items including the aforesaid item of Rs. 30,000 shown as item No. 3 in its order and directed the Income Tax Officer to re-examine the matter in the light of the directions given in its order.

4. The Department felt aggrieved by the Tribunal's direction for re-examination of the aforesaid item of Rs. 30,000 and, therefore, it applied to the Tribunal for a reference to this court and the same having been refused, an application has been made u/s 256(2) of the Income Tax Act, 1961, resulting in the above question being referred for decision of this court.

5. In the present case, we are concerned only with the justification of the Tribunal's order, in so far as it relates to the aforesaid item of Rs. 30,000, which was the addition made by the Income Tax Officer and deleted by the Appellate Assistant Commissioner. The Tribunal's direction even with regard to the re-examination of this item by the Income Tax Officer is on the basis that the Appellate Assistant Commissioner wrongly assumed that the aforesaid amount of Rs. 34,000 was to be included in the assessee's income for the assessment year 1960-61, when the Tribunal in its earlier order had held that it was to be included in the income for the assessment year 1961-62 and not 1960-61. Admittedly, after the Tribunal's earlier order, in a reference (M.C.C. No. 356 of 1974 dated on 8-1-1980), this court held that this amount of Rs. 34,000 was assessable as income in the assessment year 1960-61 and not 1961-62 as had been held by the Tribunal. After the decision of this court in M.C.C. No. 356 of 1974 decided on January 8, 1980, subsequent to the impugned order of the Tribunal dated March 31, 1973, the very basis on which the Tribunal held that the Appellate Assistant Commissioner's conclusion in respect of this item of Rs. 30,000 required re-examination ceased to exist, inasmuch as the conclusion reached by the Appellate Assistant Commissioner on the basis that the sum of Rs. 34,000 was

assessable as income in the assessment year 1960-61 was the ultimate decision on that point by this court differing from the Tribunal's view thereon. This being so, the very basis on which the impugned order of the Tribunal proceeded for rejecting the Appellate Assistant Commissioner's conclusion with regard to the item of Rs. 30,000 (shown as item No. 3 in its order) disappears and, therefore, the conclusion reached by the Tribunal on this point was clearly not justified as also its ultimate direction to the Income Tax Officer for re-examination of this item on the basis indicated by it.

6. As a result of the aforesaid discussion, our answer to the question referred is as under ;

"On the facts and in the circumstances of the case, the Tribunal was not justified in directing the Income Tax Officer to determine the amount of peak credit considering the sum of Rs. 34,000 alleged to be withdrawn from the bank as assessable in 1961-62."

7. The reference is answered accordingly. No costs.