

(1995) 04 MP CK 0024

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 222 of 1991 connected with M.C.C. No's. 192 to 199, 220, 221 and 280 of 1991

Commissioner of Income Tax

APPELLANT

Vs

Harbanslal Gupta

RESPONDENT

Date of Decision : 06-04-1995

Acts Referred:

Income Tax Act, 1961 — Section 256, 256(1)

Citation : (1998) 145 CTR 181 : (1997) 224 ITR 715 : (1995) 82 TAXMAN 189

Hon'ble Judges : Fakhruddin, J; D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : N.P. Mittal, for the Appellant; C.S. Agrawal, for the Respondent

Judgement

D.M. Dharmadhikari, J.—A common order is being passed in this application for reference at the instance of the Income Tax Department, represented through the Commissioner of Income Tax, u/s 256(2) of the Income Tax Act, 1961, and the connected Miscellaneous Civil Cases Nos. 220 of 1991 (Smt Bachan Devi Gupta), 221 of 1991 (Smt. Sudarshan Gupta), 192 to 199, all of 1991 and 280 of 1991 (Harbanslal Gupta, in all cases) as they arise out of the same proceedings of search and seizure conducted jointly by the Income Tax Department and the Central Excise Department. The applicant in all cases is the Commissioner of Income Tax, while the non-applicants in these cases are as indicated above in brackets.

2. In all the cases, the applications for making reference of certain questions of law, proposed by the Department, have been refused by the Income Tax Appellate Tribunal. The Department has, therefore, claimed reference of those questions by invoking the jurisdiction of this court u/s 256(2) of the said Act. Before considering the questions sought to be referred by the Department, it is necessary to state the factual background in which these cases arise for consideration by this court. The residential-cum-commercial premises of Shri Harbanslal Gupta were searched with the aid of the police on March 22, 1974,

and the following assets were seized :

(a) Cash : Rs. 2,41,693, (b) Gold biscuits : 14 Nos., (c) Gold ornaments : 285 tolas, (d) Impure silver : 7 Kilograms, (e) Silver coins : 143 Nos., (f) Hundi khokas : Worth Rs. 6,02,590.

3. After the search and seizure, Harbanslal Gupta and his relatives, i.e., his mother, Smt. Bachhan Devi Gupta, and his wife, Smt. Sudarshan Gupta, filed their returns. Gold biscuits and part of gold ornaments with silver/ silver coins were claimed to be belonging to the mother and the wife, as also cash.

4. The Income Tax Officer did not accept the contentions of the three persons, named above, and made assessment including as income the value of the unexplained items as belonging to Harbanslal Gupta. The Commissioner of Income Tax (Appeals), however, deleted the following additions to the income of Harbanslal Gupta :

(i) Value of 14 gold biscuits,

(ii) Value of gold ornaments,

(iii) Value of silver coins,

(iv) Value of assets in the name of his wife out of cash found at the time of the search Rs. 1,15,000.

5. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the Department went in appeal to the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal dismissed the appeal and upheld the deletion made by the Commissioner of Income Tax (Appeals). The Department then made an application for reference u/s 256(1) of the said Act and proposed 11 questions as follows for being referred to this court :

" 1. Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that the 14 gold biscuits belonged to Smt. Bachan Devi Gupta, mother of the assessee ?

2. Whether, on the facts and circumstances of the case, the Tribunal was justified in holding that 250 tolas of gold biscuits belonged to Smt. Bachan Devi Gupta, mother of the assessee ?

3. Whether, on the facts and circumstances of the case, the Appellate Tribunal was justified in holding that 7 Kg. of impure silver belonged to Smt. Bachan Devi Gupta, mother of the assessee ?

4. Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that 143 silver coins belonged to Smt. Bachan Devi Gupta, mother of the assessee ?

5. Whether, on the facts and circumstances of the case, the Tribunal was justified in relying on the oral statement of Smt. Bachan Devi Gupta, in connection with

the gold biscuits, gold ornaments, impure silver and silver coins when there was no other evidence to substantiate her oral statement ?

6. Whether, on the facts and circumstances of the case, the Appellate Tribunal was justified in holding that the 14 gold biscuits, 250 tolas of gold ornaments, 7 kg. impure silver and 143 coins belonged to Smt. Bachan Devi Gupta, mother of the assessee, when the same were seized from the possession of the assessee ?

7. Whether, on the facts and circumstances of the case, the Appellate Tribunal was justified in holding that 80 tolas of gold ornaments belonged to Smt. Sudarshan Gupta, wife of the assessee ?

8. Whether, on the facts and circumstances of the case, the Appellate Tribunal was justified in deleting an addition of Rs. 2,41,693 made on account of cash found at the time of the search ?

9. Whether, on the facts and circumstances of the case, the Appellate Tribunal was justified in holding that Smt. Sudarshan Gupta, wife of the assessee was carrying on business of money-lending and supply of coal and lime ?

10. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in relying on the statement of Smt. Sudarshan Gupta, in respect of the capital built-up when there was no evidence to support the same ?

11. Whether, on the facts and circumstances of the case, the Appellate Tribunal was justified in deleting the addition made on account of money-lending business as found from the hundi khokas ?"

6. It may be mentioned that same questions are sought to be referred in the cases M. C. C. No. 222 of 1991 and M. C. C. No. 220 of 1991, concerning the assessee, Harbanslal Gupta and M. C. C. No. 221 of 1991, concerning the assessee's wife, Smt. Sudarshan Gupta.

7. In relation to the said proceedings of search and seizure, for different assessment periods in question, in M. C. C. Nos. 192 to 199 of 1991 and M. C. C. No. 280 of 1991, in the matter of the assessee, Harbanslal Gupta, one common question in all cases, is sought to be referred which is as under :

" Whether, on the facts and circumstances of the case, the Appellate Tribunal was justified in maintaining the deletion as made by the Commissioner of Income Tax (Appeals) and confirming his order ?"

8. Learned counsel, Shri N.P. Mittal, senior advocate, appearing for the Department, made a strenuous effort by taking us through the relevant portions of the orders passed by the assessing authority and the appellate authorities to convince us that questions of law do arise out of the proceedings. Particular emphasis is laid by learned counsel for the Department on the fact that references by the appellate authority were made to orders passed by the Central Excise authorities in the matter of customs duty pertaining to seizure of gold and the order passed in the wealth-tax case of the assessee. It is urged that such

irrelevant material and evidence has been relied on by the appellate authority in upsetting partly the order of the assessing authority. It is urged that the inference is drawn against the Department and in favour of the assessee without discussing the evidence and, therefore, the question of law arises. It is submitted that the items seized from the residence of Harbanslal Gupta should have been presumed to be belonging to him and the explanation as regards gold and silver to be belonging to the two lady members of the family should not have been accepted without cogent reasons for the same. Reliance is placed on the Supreme Court decisions in *Chuharmal v. CIT* [1988] 172 ITR 25 ; *Commissioner of Income Tax Vs. Kilco Refrigeration*, and *COMMISSIONER OF Income Tax Vs. K. MAHIM.*, Learned counsel, appearing for the assessee in all the cases, *Shri O.P. Agrawal*, contended that the questions posed for answer by this court even prima facie are not questions of law. According to him, whether the explanation offered by the assessee, Harbanslal Gupta, and his female relatives was liable to be accepted or not was a question decided on the facts and circumstances of the case and are pure questions of fact. No question of law arises for which reference can be claimed. It is contended that u/s 256(2) of the said Act, the questions of law should arise out of the order of the Tribunal and not on the basis of facts and circumstances found to have been discovered by the Department. Reliance for the above proposition is placed on the Supreme Court decision in *Karnani Properties Ltd. Vs. The Commissioner of Income Tax, West Bengal*, and *Anjani Alankar Mandir Vs. Commissioner of Income Tax*,

9. After hearing counsel for the parties for a considerable length of time and having gone through the relevant portions of the orders of the assessing authorities and those in appeal, we do not find that any question of law arises in these cases for reference. Whether the appellate authorities were right in upsetting the judgment of the assessing authority, in accepting the explanation and in allowing the deduction in respect to certain items from the income of assessee, Harbanslal Gupta, are pure questions of fact which are decided on the basis of the circumstances and evidence placed on record. In deciding an application for reference u/s 256, the High Court has to consider whether on the basis of the order of the Tribunal, the advisory jurisdiction of this court is liable to be invoked on any question of law. The scope and subject-matter of Sub-section (2) is co-extensive with that of Sub-section (1) and the High Court can require the Tribunal under Sub-section (2) to refer only those questions which fall within the ambit of Sub-section (1). See *New Jehangir Vakil Mills Ltd. Vs. Commissioner of Income Tax, North, Kutch and Saurashtra*, . All questions of fact are for the Tribunal to decide and this court, whose advisory jurisdiction alone can be invoked u/s 256, cannot go behind the Tribunal's findings of fact. It is true that where a mixed question of law and fact arises, a reference of such questions can be claimed to be directed to be made, but such mixed questions would become questions of law only if the decision thereof involves application of any principle of law. Where the final determination of that question does not involve the application of any principle of law, an inference from given circumstances and the

fact is a pure inference of fact and, hence, a pure question of fact. See SREE MEENAKSHI MILLS LIMITED Vs. COMMISSIONER OF Income Tax, MADRAS., . We have gone through the relevant portions of the orders of the Commissioner of Income Tax as also the Tribunal. We do find that regarding the assessment cases of the parties any reliance has been placed on the orders of the Central Excise authorities passed for levying customs duty and orders passed in the wealth-tax case. The circumstances in the orders passed in those cases cannot be said to be wholly irrelevant and they could be taken into consideration for deciding the assessment case of the parties under the Income Tax Act. As has been already stated above, whether the explanation of the two ladies claiming certain silver and gold items as their "Streedhan" brought by them from Punjab should have been believed or not is also a pure question of fact and we do not find that there are any such errors in those orders where inferences are drawn without discussing the evidence on record.

10. Learned counsel for the assessee is right in submitting that the questions as are posed before this court (which are quoted above) do not prima facie show that any of them are questions of law. We find no scope to accept the application of the Department and direct reference of those questions for decision u/s 256(2) of the said Act to this court. The application fails, and is hereby dismissed.