(1999) 11 AHC CK 0046

In the Allahabad High Court

Case No : Income-tax Application No''s. 19, 22, 152 and 154 of 1997

Commissioner of Income Tax APPELLANT

Vs

Hari Om Agarwal RESPONDENT

Date of Decision : 18-11-1999

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 256(2), 263

Citation : (2001) 249 ITR 382 : (2001) 118 TAXMAN 59

Hon'ble Judges : S. Rafat Alam, J;M.C. Agarwal, J

Bench : Division Bench

Advocate : A.N. Mahajan, for the Appellant;

Judgement

1. All these four applications u/s 256(2) of the Income Tax Act, 1961, are in respect of the same assessee.

2. We have heard Shri A. N. Mahajan, learned counsel for the Commissioner.

3. Income Tax Applications Nos. 152 and 154 of 1997, are of assessment years 1984-85 and 1985-86 and are directed against a common order dated January 18, 1996, passed by the Income Tax Appellate Tribunal, Delhi Bench "A", New Delhi, in I. T. A. Nos. 5693 and 5694/Del of 1990. The following question is stated to be of law and to arise out of the Tribunal''s order :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in upholding the order of the Commissioner of Income Tax (Appeals), quashing the reframed assessment under Sections 143(3) and 263 of the Income Tax Act ?"

4. The facts are that the assessments for the aforesaid two years were made by the Assessing Officer. Subsequently, the Commissioner of Income Tax noticed that certain deposits in the name of various persons had not been investigated by the Assessing Officer. He, therefore, found that the assessments were erroneous and prejudicial to the interests of the Revenue. Therefore, by an order

dated March 24, 1987, the Commissioner set aside the assessment orders and directed the Assessing Officer to make a fresh assessment after proper enquiry. Thereafter, in compliance with the directions u/s 263 of the Act, the Assessing Officer made a fresh assessment and brought to tax some additional amount. The assessee appealed against the assessments to the Commissioner of Income Tax (Appeals) who found that after making of the said reassessment, the Commissioner''s order u/s 263 of the Act had been set aside by the Tribunal, He, therefore, cancelled the assessment orders made in compliance with the order u/s 263 of the Act. Against the aforesaid orders, the Commissioner filed the aforesaid appeals, which were dismissed by the Tribunal.

5. In the Income Tax Applications Nos. 19 and 22 of 1997, the assessment years involved are 1986-87 and 1987-88. For these years the assessments were made but were subsequently set aside by the Commissioner u/s 263 of the Act on the ground that they were erroneous and prejudicial to the interests of the Revenue. In pursuance of the order u/s 263 of the Act, the Assessing Officer made reassessments against which the assessee appealed to the Commissioner of Income Tax (Appeals), who found that the Commissioner''s order u/s 263 of the Act had been cancelled by the Income Tax Appellate Tribunal vide order dated September 25, 1989. He, therefore, cancelled the assessment order made in pursuance of the order u/s 263 of the Act. Against the orders of the Commissioner of Income Tax (Appeals), the Commissioner preferred Appeals Nos. 6388 and 6389 of 1990, which have been decided vide order dated December 13, 1995, and it upheld the orders passed by the Commissioner of Income Tax (Appeals) because order u/s 263 of the Act stood cancelled. In respect of this order, the Commissioner has preferred the present applications praying that the Appellate Tribunal be directed to state a case and to refer the following identical questions for the opinion of this court :

"(1) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was legally correct to rely on its earlier order vacating the order of the learned Commissioner of Income Tax, Meerut, passed u/s 263 thereby deleting addition of Rs. 32,000 when the matter is still subjudice before the Allahabad High Court ?

(2) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in excluding the income of Smt. Sangeeta Agarwal w/o the assessee when the matter is still subjudice before the Allahabad High Court ?"

6. As is evident the question raised by the Revenue is whether the Tribunal was justified in upholding the order passed by the Commissioner of Income Tax (Appeals) quashing the reframed assessments. As stated above the Assessing Officer acquired jurisdiction to make fresh assessments only by the order passed by the Commissioner in all these years u/s 265. The orders u/s 263 having been cancelled by the Tribunal, the very basis of jurisdiction vanished and the reassessment orders passed by the Assessing Officer became res nullius and

even without any appeal etc., they could not be enforced. The answer to the questions proposed by the Commissioner is, therefore, self-evident because in the face of the earlier orders of the Tribunal quashing orders u/s 263, the assessment orders could not stand.

7. Learned counsel for the Commissioner contended that for the assessment years 1984-85 and 1985-86, the Commissioner had come to this court u/s 256 against the Tribunal''s order cancelling the Commissioner''s order u/s 263 and in those applications moved u/s 256(2) of the Income Tax Act, 1961, being I. T. A. Nos. 107 and 108 of 1991, this court vide order dated August 5, 1991, had directed the Tribunal to state a case and refer certain questions for the opinion of this court.

8. Shri Mahajan, learned counsel for the Commissioner, contended that in case that reference is answered in favour of the Revenue, a piquant situation may arise, inasmuch as, the assessment orders stand cancelled by the Tribunal in the impugned orders and that these petitions were intended to keep the matter alive. We have considered this aspect. But our jurisdiction is limited to the consideration of the question that have been proposed in the applications in hand. The question that is raised is merely whether the Tribunal was right in law in upholding the order of the Commissioner of Income Tax (Appeals) quashing the re-framed assessments. The correctness of the Tribunal''s order is to be seen in the light of the circumstances existing on the date of the order and since on that date the Commissioner''s order u/s 263 had ceased to exist, the order passed by the Commissioner (Appeals) and thereafter by the Tribunal were appropriate orders permissible in law. Therefore, answer to the aforesaid question is self-evident and no referable question of law arises. In case the Commissioner succeeded in the reference, he may take appropriate proceedings by approaching the Tribunal in its inherent jurisdiction to recall its order or any other appropriate remedy that may be found feasible. For the above reasons, these applications are dismissed.