
(1995) 09 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No"s. 320, 321, 322, 323, 324 and 325 of 1995

Commissioner of Income Tax

APPELLANT

Vs

Hassomal

RESPONDENT

Date of Decision : 21-09-1995

Acts Referred:

Income Tax Act, 1961 — Section 256

Citation : (1996) 133 CTR 1 : (1996) 217 ITR 636

Hon'ble Judges : S.B. Sakrikar, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : D.D. Vyas, for the Appellant;

Judgement

A.R. Tiwari, J.—The aforesaid six miscellaneous civil cases as particularised above, raise common question and as such were heard on the question of admission together.

2. The applicant (Commissioner of income tax) has filed these applications u/s 256(2) of the Income Tax Act, 1961 (for short, "the Act"), seeking a direction to the Income Tax Appellate Tribunal, Indore, to refer the case to this court for answering the question of law as proposed.

3. The facts lie in a narrow compass. The assessee, Hassomal, was a partner in the firm, Prahladrai Hassomal. He expired on November 14, 1989. His widow, Smt. Ishwaribai, was admitted as a partner in this firm. The returns of income for the assessment years 1978-79 to 1983-84 were filed by the assessee, Hassomal, on March 31, 1987, under the Amnesty Scheme declaring his income as Rs. 5,000 for each of the assessment years of 1978-79, 1979-80 and 1981-81, as Rs. 9,000 for the assessment year 1981-82, as Rs. 10,000 for each of the assessment years 1982-83 and 1983-84. No source of income was disclosed by the assessee on the fulcrum that the same was not required to be disclosed under the Amnesty Scheme. The assessments were completed and the proceedings for penalty were initiated under Sections 273(2)(a) and Section

271(1)(c) of the Act on the ground that the declarations were untrue. The assessing authority passed the consolidated order for six years, i.e., from 1978-79 to 1983-84. The Deputy Commissioner of Income Tax (Appeals) confirmed the consolidated order on appeal. The assessee filed further appeal. The Tribunal allowed the appeal holding that the conditions of the Amnesty Scheme were fulfilled and, as such, the proceedings of penalty were unwarranted in law. The search and seizure operations were carried in January, 1986. The declarations were made on March 31, 1987. The applicant felt that the assessee was not entitled to receive benefit under the Amnesty Scheme in view of the Circular No. 451 dated February 17, 1986 (see [1986] 158 ITR 135) issued by the Central Board of Direct Taxes in an effort to clarify the Press Note and certain circulars issued by the Ministry of Finance regarding declaration of higher income or wealth. The applicant, therefore, filed an application u/s 256(1) of the Act before the Income Tax Appellate Tribunal for referring the case to this court. The question of law framed by the applicant was as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in directing to allow amenities provided by the Amnesty scheme even when the same were not allowable ?"

4. The Appellate Tribunal considered the matter and found that no referable question of law was involved. Thereafter, the applicant has filed these miscellaneous civil cases u/s 256(2) of the Act for six different years.

5. We have heard Shri D.D. Vyas, learned counsel for the applicant, on the question of admission.

6. Shri Vyas submitted that in view of the search and seizure operations, the assessee was not entitled to submit the declaration under the Amnesty Scheme and receive any benefit thereunder, He also submitted that the Tribunal was not correct in placing reliance on the case of Mst. Anisa Bano Vs. Income Tax Officer and Others, . He, therefore, submitted that the question of law as proposed arose for answer by this court.

7. We find that the Tribunal rejected the application on the undernoted conclusion :

"We have considered the rival submissions. It is undisputed that the Tribunal has recorded a categorical finding that the income declared by the assessee was not the subject-matter of search and seizure operations. The circular of the Board which has been relied on by both the sides was issued by the Central Board of Direct Taxes in order to clarify the Press Note and certain circulars issued by the Ministry of Finance regarding declaration of higher income or wealth. The said circular is in the shape of questions and answers. Question No. 12, no doubt, states that the immunity given by the circulars cannot be availed of by the assessee, whose premises have been searched by the tax authorities. However, question No. 30 and the reply thereto state that where an assessee makes a declaration in respect of assets or income which is not the subject-matter of

seizure then such declaration can be made under the scheme. As already indicated above, the income offered by the assessee was not the subject-matter of search and seizure operations. In the case of Mst. Anisa Bano Vs. Income Tax Officer and Others, , the High Court of Madhya Pradesh has held that while making the assessment under the Amnesty Scheme, the declaration made by the declarant has to be accepted and the declarant is to be assessed on the basis of the declaration made by him. At that time, the question of asking the source of the income to be assessed would not arise, because if the declarant is asked to declare the source of income, while making a declaration under the Amnesty Scheme, then the whole purpose of the scheme will be frustrated. The court went on to say that the Amnesty scheme is actually formulated to unearth undeclared money and to afford an opportunity to the tax evaders to voluntarily declare the money and to pay the tax under the scheme."

8. The request in these cases is under the umbrella of the aforesaid circular. The circular is said to be in the shape of questions and answers. Question No. 12 states that the immunity given by the circulars cannot be availed of by the assessee whose premises have been searched by the tax authority. Question No. 30 and the reply thereto, however, make it luculent that where an assessee makes a declaration in respect of assets or income, which is not the subject-matter of seizure, then such a declaration can validly be made under the scheme. The Tribunal found it as a fact that income offered by the assessee was not the subject-matter of search and seizure operations.

9. There is no dispute that the declaration was capable of being made under the Amnesty scheme. The only contention in opposition is that the declaration was unacceptable in view of the search and seizure operations. Two factors clearly stare us in the face -

(a) The search and seizure operations were carried out in January, 1986, whereas the declarations were made under the Amnesty Scheme on March 31, 1987, i.e., after about 15 months.

(b) The finding recorded is that the income disclosed in the declarations under the Amnesty Scheme was not the subject-matter of search and seizure operations.

10. In view of the finding of fact, reached on an appreciation of facts and circumstances, it cannot be said that the question of law as proposed falls for consideration.

11. Counsel for the applicant was unable to show as to how the benefit was not allowable in the face of the finding that the income offered by the assessee was not the subject-matter of search and seizure operations. The orders passed are on the linchpin of question No. 30 and reply thereto. It is thus clear that question No. 12 is required to be read along with question No. 30 for a harmonious construction of the scheme.

12. The orders are, thus, passed on an appreciation of facts and features. No question of law, thus, arises and no case for reference is thus, visible.

13. In the result, we decline admission and dismiss all the aforesaid six cases summarily without notice to the other side.

14. This order shall be retained in Miscellaneous Civil Case No. 322 of 1995 and its copies shall be retained in the other connected five miscellaneous civil cases as particularised above.