

(1996) 04 MP CK 0034

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No's. 264 and 267 of 1993

Commissioner of Income Tax

APPELLANT

Vs

Hope Textiles Ltd.

RESPONDENT

Date of Decision : 04-04-1996

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 256(2)

Citation : (1997) 143 CTR 33 : (1997) 225 ITR 993

Hon'ble Judges : N.K. Jain, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : D.D. Vyas, for the Appellant; S.C. Bagadiya, for the Respondent

Judgement

1. By these applications u/s 256(2) of the Income Tax Act, 1961 (for short "the Act"), the Revenue seeks direction to the Income Tax Appellate Tribunal, Indore Bench, Indore, to state the case and refer the undernoted question of law to this court for its opinion, arising out of the Tribunal's order dated December 5, 1990, passed in I.T.A. Nos. 280 and 281/Ind. of 1985 and its refusal to refer the case by orders dated November 30, 1992, passed in R. A. Nos. 34 and 35/Ind. of 1991, for the assessment years 1972-73 and 1974-75, respectively :

" Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the Income Tax Officer was not empowered to make fresh disallowance during the reassessment proceedings after the original assessment had been set aside by the Commissioner of Income Tax (Appeals) ?"

2. In both these cases the assessments made by the Assessing Officer for the aforesaid assessment years (1972-73 and 1974-75) were set aside by the Commissioner of Income Tax (Appeals) vide his common order dated January 30, 1982, and the cases were remanded to the Assessing Officer with the direction to reconsider the matter relating to the disallowance out of machinery repairs. The order of the Commissioner of Income Tax (Appeals) inter alia, provided :

". . . since the Income Tax Officer's order is completely wanting in relevant

information on the abovementioned aspects of the matter, I would think it reasonable to send back this matter to the Income Tax Officer for detailed examination in the light of case law on the subject. The Income Tax Officer in redeciding the matter relating to the disallowance out of machinery repairs would go into the relevant facts concerning each of the items disallowed by him as of capital nature. He may in this connection call for further information from the appellant company for coming to a proper conclusion. The matter regarding disallowance out of machinery repairs is, therefore, set aside for fresh determination in the light of my above observations."

3. The Income Tax Officer while making the fresh assessment in pursuance of the order of the Commissioner of Income Tax (Appeals), made additions of Rs. 13,29,545/Rs. 10,19,752 on account of undervaluation of closing stock. In appeal, this addition was deleted by the Commissioner of Income Tax (Appeals) holding that the Income Tax Officer in making the addition has travelled beyond his jurisdiction. The Revenue filed appeals before the Tribunal. The Tribunal dismissed the appeals by a common order dated December 5, 1990, and endorsed the decision of the Commissioner of Income Tax (Appeals). Dissatisfied with the decision of the Tribunal, the Department made reference applications before the Tribunal which too were dismissed, thus giving rise to the present applications.

4. We have heard Shri D. D. Vyas, learned counsel for the applicant/ Department and Shri S. C. Bagdia, learned counsel for non-applicant/ assessee.

5. It is well-settled that an appellate authority while remanding the case, can give directions and lay down limits for the enquiry to be made by the lower court. When such a direction is made and limits are laid down, the power and jurisdiction of the lower court to deal with the case, after remand, depend on the specifications of the remand order. The lower court has no jurisdiction to enter into any question which falls outside this limit (See V.R. Subramanyam Vs. B. Thayappa and Others, and Budhilal Deviprasad and Another Vs. Jagannathdas Bajrangdar,). In the instant case, the Commissioner of Income Tax (Appeals) has in its remand order dated January 30, 1982, made a clear direction to the Assessing Officer to reconsider the case only on the matter relating to the disallowance out of machinery repairs. The Assessing Officer had, therefore, clearly travelled beyond the specifications of the remand order in making the aforesaid additions and the appellate authorities were, therefore, right in deleting the said additions. The order of the Tribunal is based on a proper appreciation of the settled legal position and does not, therefore, give rise to any referable question of law.

6. A decision in Kundanlal Maru Vs. Commissioner of Income Tax, rendered by this court and relied on heavily by the Department turns on a different set of facts. In that case the order of remand clearly contained the direction (headnote) : "to apply his mind afresh to the problem and process the whole matter after giving sufficient opportunity to the assessee and frame an

assessment order in accordance with law". The ratio in the case of Kundanlal Maru Vs. Commissioner of Income Tax, , therefore, is not available to the Department in the instant case.

7. We, accordingly, dismiss both the above applications but without any order as to costs. Counsel's fee Rs. 750 is allowed in each case for each side, if certified.

8. This order be retained in M. C. C. No. 264 of 1993 and a copy be placed on the record of M. C. C. No. 267 of 1993.