
(1994) 09 P&H CK 0046
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Case No. 162 of 1994

Commissioner of Income Tax

APPELLANT

Vs

Lakshmi Printing Co.

RESPONDENT

Date of Decision : 30-09-1994

Acts Referred:

Income Tax Act, 1961 — Section 256(2)

Citation : (1994) 122 CTR 391 : (1995) 2 ILR (P&H) 475 : (1995) 211 ITR 172

Hon'ble Judges : Sat Pal, J; R.P. Sethi, J

Bench : Division Bench

Advocate : R.P. Sawhney and Aradhana Sawhney, for the Appellant;

Judgement

1. By means of this application filed under Sub-section (2) of Section 256 of the Income Tax Act, 1961 (for short, "the Act"), a prayer is made that a direction be issued to the respondent-Tribunal to make a reference to this court regarding the alleged question of law formulated before it. In view of the Full Bench judgment of five judges of this court in Commissioner of Income Tax Vs. Sovrin Knit Works, , the present petition is not maintainable as the point of law sought to be referred stands already settled by the aforesaid judgment. Mr. R.P. Sawhney, advocate, submits that after the grant of the SLP filed by the Revenue, a direction is required to be issued to the Tribunal for making a reference to this court, as according to him, the admission of the appeal in the Supreme Court by itself makes a question, the subject-matter of the appeal, to be an important question of law. Learned counsel has also relied upon Commissioner of Income Tax, Ernakulam Vs. Managing Trustee, Jalakhabai Trust, and CIT v. Dharam Pal Shanti Sarup [1978] 114 ITR 411 in support of his submissions and to urge that while deciding a petition under Sub-section (2) of Section 256 of the Act, the court should not be concerned with the ultimate result which is likely to emerge.

2. It is the acknowledged position of law that the powers exercised under Sub-section (2) of Section 256 of the Act are advisory in nature. Being a special jurisdiction, the High Court can require the making of a reference upon a

question of law which has not been settled or decided by it or by the apex court. In view of the Full Bench judgment of this court in Commissioner of Income Tax Vs. Sovrin Knit Works, , no further action is required to be taken. The mere admission of an appeal in the Supreme Court without even staying the operation of the judgment of this court cannot be held to be a question of law requiring a direction for making a reference in terms of Sub-section (2) of Section 256 of the Act. The reliance of learned counsel upon the aforesaid two judgments is misplaced.

3. A Division Bench of this court in Commissioner of Income Tax (Central) Vs. Shiv Parshad, held (headnote) :

"The Tribunal was right in declining to refer the case for the opinion of the High Court because the court had already expressed an opinion on that law point and had dissented from the view taken by the Allahabad High Court and no useful purpose would be served by issuing a writ of mandamus u/s 256(2) because it had not been shown to the court that the opinion already expressed by the court in CIT v. Anand Sarup's case [1980] 121 ITR 873 was erroneous. Further, it would be a futile exercise for the Tribunal to refer the matter to the High Court and if the Tribunal declined, then to issue a mandamus to the Tribunal to refer the matter, because, in either eventuality, the answer would be a foregone conclusion. In such a situation, it should be deemed that the case was stated to the High Court and following the earlier decision, the High Court had answered the question on these lines."

4. To the same effect are the judgments in Commissioner of Income Tax Vs. Indian Press Exchange Ltd., and COMMISSIONER OF Income Tax Vs. K. S. R. T. C. PENSION AND GRATUITY FUND TRUST, .

5. The Supreme Court in Commissioner of Income Tax, Punjab Vs. Chander Bhan Harbhajan Lal, held that where the question of law raised was not substantial and the answer to the question was self-evident, the court was not bound to require the Tribunal to refer the question. In the instant case, the answer to the question sought to be referred is self-evident in view of the judgment of the Full Bench in Commissioner of Income Tax Vs. Sovrin Knit Works, .

6. No merit. Dismissed.