

(1999) 06 GAU CK 0040
In the Gauhati High Court
Case No : Civil Rule No. 14 (M) of 1998

Commissioner of Income Tax

APPELLANT

Vs

M.L. Agarwalla

RESPONDENT

Date of Decision : 04-06-1999

Acts Referred:

Income Tax Act, 1961 — Section 256, 256(1), 32A

Citation : (2000) 159 CTR 410 : (1999) 2 GLT 159 : (1999) 238 ITR 603

Hon'ble Judges : Brijesh Kumar, C.J.; P.C. Phukan, J

Bench : Division Bench

Advocate : G.K. Joshi and U. Bhuyan, for the Appellant; R. Goenka and R.K. Agarwalla, for the Respondent

Judgement

Brijesh Kumar, C.J.—This is an application u/s 256(2) of the Income Tax Act, 1961, with a prayer that a show-cause notice be issued to the respondents, as to why the question of law formulated or arising out of order dated March 27, 1997, passed by the Income Tax Appellate Tribunal, Guwahati Bench, Guwahati, in ITA No. 175 (Gau) of 1993, be not submitted to this court for opinion, after hearing the parties.

2. The brief facts of the case are that the respondent-assessee filed the return of income for the assessment year 1989-90 and claimed deduction of investment allowance u/s 32A of the Income Tax Act in respect of ultrasound medical diagnostic electronic equipment, servo-voltage stabiliser and air-conditioner. The Assessing Officer by order dated March 30, 1992, disallowed the claim of investment allowance holding that the ultrasound diagnostic medical equipment is utilised for observing and studying the internal organs of the human body. It only displays internal human organs on the screen, but no new article is manufactured or produced which may have a distinctive name, character and use. Aggrieved by the order passed by the Assessing Officer, the respondent preferred an appeal which was allowed by the Deputy Commissioner of Income Tax (Appeals), Guwahati Bench, Guwahati, vide order dated September 23,

1993. Relying upon certain decisions on the point, the appellate authority accepted the contentions of the assessee-respondent holding that the ultrasound machine is an electronic unit consisting of various apparatus which includes a computer, a display screen and ultra-sound generating equipment which has to be installed in a dust proof air-conditioned room. The appellate authority also made the following observations :

"Ultra-sound uses high frequency sound waves beyond the audible level. The sound is reflected from different depths within the body and the computer converts the signals into a picture produced on the screen, it is operated by a qualified specially trained medical doctor. After the imprint is taken on the raw film, the film is taken to a dark room for further processing to get the final product, i.e., the positive print."

3. The Revenue preferred an appeal against the order of the Deputy Commissioner of Income Tax (Appeals) before the Income Tax Appellate Tribunal, Guwahati Bench, Guwahati. The appeal was, however, dismissed by order dated March 27, 1997. The Appellate Tribunal observed that the first appellate forum has considered the facts and has given reasoning and the natural function of the asset in respect of which investment allowance was claimed, which was not controverted by the Revenue. It relied upon the decision of the Rajasthan High Court, reported in Commissioner of Income Tax Vs. Trinity Hospital, . Feeling satisfied by the order passed by the Deputy Commissioner of Income Tax (Appeals), the Tribunal upheld the same. The Revenue moved an application u/s 256(1) of the Income Tax Act for referring the question of law for the opinion of this court. The question formulated for reference is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in allowing investment allowance on ultrasound medical diagnostic electrical equipment, air-conditioner and servo-voltage stabiliser ?"

4. The application u/s 256(1) of the Income Tax Act moved by the Revenue was rejected by order dated August 27, 1997. While doing so, the Tribunal also observed that the decision of the Rajasthan High Court in the case of Commissioner of Income Tax Vs. Trinity Hospital, , was considered and no decision taking a contrary view was shown. The present application, as indicated earlier, has been moved u/s 256(2) of the Income Tax Act.

5. Learned counsel for the Revenue has vehemently urged that ultrasound machine does not manufacture any article or thing. It only reflects internal organs of the body on the screen and there is no manufacture of anything which may be treated as an article produced. It is submitted that the question of law does arise as to whether, in the facts and circumstances of the case, the assessee would be entitled for investment allowance u/s 32A of the Act or not.

6. Learned counsel appearing for the Revenue has placed reliance upon the decision reported in Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, . In this case the assessee which was

carrying on business of laying "pressure piling" foundation for buildings, was held to be not manufacturing or producing any article. It was further observed that the meaning of the word "article" is to be derived in the context in which it is used. Hence, work of pressure piling was held not to be "manufacture" of any article. Mr. G. K. Joshi, learned senior standing counsel appearing for the Revenue, has further submitted that the question as to whether investment allowance can be claimed or not is a question of law, and in support of his contention has placed reliance on a decision reported in Commissioner of Income Tax Vs. Rajasthan Spinning and Wvg. Mills Ltd., . Yet another decision has been relied upon, namely, Commissioner of Income Tax Vs. Hans Raj Gupta and Co. (P.) Ltd., .

7. Mr. R. Goenka, learned counsel appearing for the respondent-assessee, has relied upon a case reported in Commissioner of Income Tax Vs. Prasad Film Laboratories P. Ltd., . In this case the Andhra Pradesh High Court allowed investment allowance on production of cinematograph film negative. It was held to be a manufactured product and the making of positive was held to be a different independent activity. It was observed that by the process carried out by the assessee, the raw film without image and sound were converted into films with images and sounds, which was a new and distinct commodity well known in the trade as positive prints quite different from raw film. Another case upon which reliance has been placed is Commissioner of Income Tax Vs. Air Survey Co. of India (P.) Ltd., . The Calcutta High Court in this case held that the assessee was deriving income from surveying, mapping and aerial photography for certain departments ultimately resulting in photographs, amounted to manufacture of or production of articles and the assessee was held to be entitled for investment allowance. The next case cited by learned counsel for the assessee-respondent is reported in Commissioner of Income Tax Vs. Dr. L.C. Mitra, . In this case the x-ray machine and ECG plants, etc., were held to be plant and investment allowance was held to be admissible to the assessee who was a doctor by profession. Yet another decision in Commissioner of Income Tax Vs. Upasana Hospital, , the Kerala High Court held that investment allowance was admissible to a firm running a hospital for expenditure on purchase of x-ray plant, ICCU and ECG equipment.

8. On the basis of the decisions referred to above as relied upon by the assessee-respondent, it is submitted that different High Courts have taken the view that on such diagnostic equipment which display internal condition of the body organs or processing of films and photographs have been held to be entitled for investment allowance u/s 32A of the Income Tax Act. It is also submitted that the case in hand is no different from the cases referred to above. Thus the point which has been raised by the Revenue/petitioner is a question which stands settled. Hence, no case is made out for directing the Tribunal to refer the question, as formulated, for opinion of this court.

9. Learned counsel appearing for the respondent-assessee, further submits that

in interpreting the Central legislation it is normally considered appropriate that there may be uniformity in the view taken by different High Courts. In support of his contention reliance has been placed upon a decision as reported in COMMISSIONER OF Income Tax Vs. DEEPAK FAMILY TRUST NO. 1 AND OTHERS., . A Division Bench of the Gujarat High Court observed that Income Tax matters which are governed by an all-India statute, it would be a wise judicial policy and practice not to take a different view. Exceptions in certain circumstances are indicated in the judgment, e.g., where the decision is sub silentio, per incuriam, obiter dicta or based on a concession or takes a view which is impossible to arrive at or there is another view in the field, etc.

10. Reliance has also been placed on a decision reported in Commissioner of Income Tax, Bangalore Vs. B.C. Srinivasa Setty, . On a certain question most of the High Courts had taken a certain view whereas a different view was taken by two other High Courts, the Supreme Court accepted the former view on the basis of preponderance of judicial opinion. However, so far the above named two decisions cited by learned counsel for the assessee-respondent are concerned, we feel that the questions involved therein are not relevant for the purpose of this case. It is not a case where different views of different High Courts are to be considered. Hence, there is no reason for considering the preponderance of judicial opinion. So far the other question is concerned, it has been fairly conceded by learned counsel for the assessee-respondent that it cannot be argued that it is not open to the High Court to take a different view, though as a matter of policy High Courts may maintain uniformity of view on a particular question relating to a Central legislation.

11. Mr. G. K. Joshi, learned counsel appearing for the petitioner-Revenue, submits that since a question of law is involved this court may direct the Tribunal to state a case and refer the question of law as formulated for opinion of this court. We have already referred to certain decisions cited by learned counsel for the Revenue on the point that a question of law should be referred for decision. But the question which falls for consideration is as to whether every question of law is to be stated and referred for opinion of the High Court. It would be difficult to hold so. In a case where the question of law stands settled by a decision of the apex court, there would hardly be any occasion to direct the Tribunal to state the case and refer the same to the High Court. Similarly, if the controversy stands settled by a decision of the same High Court, in that event too there would be no occasion to refer the question which may come for consideration thereafter unless of course the court feels that the view taken in the earlier decision of the same court requires reconsideration. It would be quite correct on the part of the Tribunal or the High Court itself to follow the earlier decision of the High Court. In the present case no decision of the apex court on the question involved has been brought to our notice by any of the parties nor any earlier decision of this court. In such circumstance this court will have to find out whether the Tribunal has decided the question taking a correct view or not. It will not be open to direct the Tribunal to refer such a question if the High Court is

satisfied that the view taken by the Tribunal is a correct view. The Tribunal in support of the view taken by it, may certainly rely on the decisions of other High Courts.

12. The Deputy Commissioner of Income Tax (Appeals) while allowing the appeal has gone into the details of the functioning of the ultrasound electronic diagnostic equipment and the use to which it is put and ultimately the report, i.e., the print which is obtained. The process involved and the functions and use ultimately resulting in the printed report have not been disputed by the Revenue either before the Deputy Commissioner of Income Tax (Appeals), the Tribunal or before this court. An observation to that effect is also to be found in the order of the Deputy Commissioner of Income Tax (Appeals). In our view the Deputy Commissioner of Income Tax (Appeals) has rightly come to the conclusion that ultimately the print which is the outcome of the whole process would be covered by the term "manufacture of article". A special type of film or material is to be fed which is obviously blank, but after the processing it is obtained with the photographs/prints of the organs and the data related to such organs. It is not the same thing, as fed into the machine as raw material. On this point the Deputy Commissioner of Income Tax (Appeals) has taken a correct view which has been rightly upheld by the higher authority. That also stands supported by the view taken in the judgment of the Rajasthan High Court in Commissioner of Income Tax Vs. Trinity Hospital, . Apart from this case several other decisions have been referred to, taking a similar view on similar facts and circumstances. Therefore, where the court feels that the Tribunal has taken a correct view, there would be no justification to ask the Tribunal to state the case and refer the matter for the opinion of this court.

13. It would be necessary only where this court would find that the view taken by the Tribunal is not a correct view. In this connection it would be proper to see the provision contained u/s 256(2) of the Income Tax Act, which reads as follows :

"(2) If, on an application made under Sub-section (1), the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of such refusal, apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition, the Appellate Tribunal shall state the case and refer it accordingly."

14. A bare perusal of Section 256(2) of the Income Tax Act shows that the High Court may "if it is not satisfied with the correctness of the decision of the Appellate Tribunal" require the Appellate Tribunal to state the case and refer it to the High Court. Therefore, before directing the Tribunal to state the case and refer the question while exercising the power u/s 256(2) of the Act the High Court must be satisfied that the Appellate Tribunal has not taken a correct view.

It would not be appropriate to exercise this jurisdiction requiring the Tribunal to state and refer the case even though the High Court may be satisfied that the view taken by the Appellate Tribunal is the correct view.

15. To clarify it again, it is observed that in case the High Court is not satisfied about the correctness of the decision of the Appellate Tribunal, it would always be open to require the Tribunal to state and refer the question to the High Court but not otherwise. In one of the decisions reported in Commissioner of Income Tax, Bombay Vs. Godavari Corpn. Ltd., , the High Court rejected the application of the Revenue u/s 256(2) of the Income Tax Act, in appeal the Supreme Court upheld the order observing that the question had already been decided by the Supreme Court in an earlier decision. We have referred to the above case only with a view to indicate that the question of law which stands settled need not be referred that is to say, every question of law must not necessarily be referred. Similarly, where the correctness of order passed by the Tribunal is not in doubt, rather the High Court is satisfied about its correctness, there would be no occasion to call for a reference from the Tribunal.

16. In view of the discussion held above, we find that without going into the question of preponderance of judicial opinion or desirability of maintaining uniformity in the judicial, view of different High Courts, we are otherwise satisfied about the correctness of the view taken by the Appellate Tribunal. Hence, we hardly find any occasion to admit reference as also in view of the fact that both parties have been heard at full length. In our view in the facts and circumstances of the case the Deputy Commissioner of Income Tax (Appeals) took a correct view in making the investment allowance admissible u/s 32A of the Income Tax Act to the assessee-respondent and which order has been rightly upheld by the Appellate Tribunal. The Tribunal has also committed no mistake in rejecting the application u/s 256(1) of the Act.

17. The application is, therefore, rejected. We make no order as to costs.