(2009) 02 GUJ CK 0004

In the Gujarat High Court

Commissioner of Income Tax — APPELLANT

Vs

Nirajan K. Zaveri — RESPONDENT

Date of Decision : 09-02-2009

Acts Referred:
Income Tax Act, 1961 — Section 254, 256, 69A

Citation : (2009) 02 GUJ CK 0004

Hon'ble Judges : S.R. Brahmbhatt, J;D.A. Mehta, J

Bench : Division Bench

Judgement

D.A. Mehta, J.—Tribunal, Ahmedabad Bench B has referred the following three questions u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as the Act) at the instance of Commissioner:

1. Whether, the Tribunal is right in law and in facts in entertaining miscellaneous application for recalling the earlier order ?

2.Whether, the Tribunal ought to have appreciated that the miscellaneous application sought to review the earlier order, which was not permissible under the provisions of Section 254(2) of the Act ?

3.Whether, by entertaining and allowing the miscellaneous applicationthe Tribunal can be said to have reviewed its order passed in Income Tax Act ?

2. The assessment year in question is assessment year 1985-86. On the basis of search and seizure proceedings in December, 1984 at the residential premises of respondent assessee, gold ornaments valued at Rs. 1,24,980 were treated as unexplained investment and an addition to the extent of the said amount was made by invoking provisions of Section 69A of the Act. The assessee succeeded in first appeal before Commissioner (Appeals) and revenue carried the matter in appeal before the Tribunal. The Tribunal, for the reasons recorded in order dated 27-6-1995, allowed the appeal of the revenue.

3. The assessee filed a miscellaneous application before the Tribunal praying for

recalling of the order and fresh adjudication after considering all the facts and material on record. The said miscellaneous application came to be allowed by the Tribunal vide order dated 18-3-1996. The material part of the said order reads as under:

4. The assessee in the present miscellaneous application has objected/ disputed to the observations/findings given by the Tribunal in various paras of the order claiming that such observations/findings are either not based on material facts on record or material already available has not been properly appreciated and considered. It has also been mentioned that the appeal before the Tribunal was by the revenue and for want of certain material the Tribunal has taken an adverse view against the assessee rather than against the revenue and same is against the principles of natural justice. It has therefore been claimed that the Tribunal order has resulted in great injustice to the assessee on account of various unintentional mistakes crept in the Tribunal order. The learned Counsel for the assessee has cited some decisions in its support and has prayed that the Tribunals order deserves to be recalled for fresh adjudication after considering all the facts and material evidence on record in proper perspective.

5. The learned departmental Representative on the other hand has submitted that the Tribunal has decided the issue on proper appreciation of facts and material available on records and there is no mistake involved as apparent from records.

6. We have considered the facts and also gone through the Tribunals order, miscellaneous application and the material evidence on record and we feel that there is some substance in the submissions made on behalf of the assessee in the Miscellaneous application. It would be in the fitness of things and in the interest of natural justice that the Tribunal order is recalled for fresh adjudication and we order accordingly. The Registry is directed to fix the revenue appeal for hearing on priority for disposal.

7. In the result the miscellaneous application filed by the assessee is allowed.

4. Heard the learned Counsel appearing for both the sides.

5. It is not necessary to set out the respective contentions in detail in light of the fact that the controversy now stands concluded by a decision of this High Court rendered in the case of Asstt. Assistant Commissioner of Income Tax Vs. Saurashtra Kutch Stock Exchange Ltd., which has since been affirmed by the apex court as reported in Asstt. CIT v. Saurashtra Kutch Stock Exchange Ltd. (2008) 305 ITR 227 (SC). If the Tribunal has committed an inadvertent error which results in injustice to one or the other side, the Tribunal is entitled to recall the order in given set of facts and circumstances of the case and decide the matter in accordance with law, facts and evidence on record.

6. Applying the ratio of the aforesaid decision in the facts of the case, it is not possible to hold that the impugned order dated 18-3-1996 suffers from any legal

infirmity so as to warrant any interference. Accordingly, question No. 1 is answered in the affirmative i.e. in favour of the assessee and against the revenue and question Nos. 2 and 3 are answered in the negative i.e., in favour of the assessee and against the revenue. The reference stands disposed of accordingly with no order as to costs.