(1997) 03 SC CK 0209

In the Supreme Court Of India

Case No : Civil Appeal No. 6327 of 1983 (From the judgment and order dt. 28th Feb., 1980 of the Madhya Pradesh High Court in MCC No. 577 of 1974 reported as CIT vs. Nirbheram Daluram (1981) 127 ITR 491 (MP))

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

NIRBHERAM DALURAM. — RESPONDENT

Date of Decision : 05-03-1997

Acts Referred:
Income Tax Act, 1961 — Section 147, 251, 84

Citation : (1997) 139 CTR 484

Hon'ble Judges : S.C. AGRAWAL, G.B. PATTANAIK

Bench : Division Bench

Advocate : B. KRISHNA PRASAD, C. RADHAKRISHNAN, JANKI RAMACHANDRAN, N. D. B. RAJU, RANBIR CHANDRA

Final Decision : Allowed

Judgement

BY THE COURT :

In this appeal, by special leave, the question that falls for consideration relates to the scope of the powers of the AAC while dealing with appeals against orders of AOs under s. 251 of the IT Act, 1961 (hereinafter referred to as "the Act"). The matter relates to the asst. yr. 1956-57. Nirbheram Daluram (hereinafter referred to as "the assessee") is a partnership firm carrying on business in grains, rice, gunny bags and oil seeds, etc. Under order dt. 11th March, 1957, assessment was originally made on a total income of Rs. 28,724. On reassessment in proceedings initiated under s. 147 of the Act the ITO included in the total income a sum of Rs. 2,45,000 referable to ostensible transactions in hundi loans shown by the assessee. The assessee filed an appeal against the said assessment order passed by the ITO. The AAC not only sustained the said addition of Rs. 2,45,000 but he also took notice of 10 other items of ostensible hundi loans amounting to Rs. 2,30,000 and directed that the total income be enhanced by the sum of Rs. 2,30,000. On further appeal, the Tribunal deleted the said addition of Rs.

2,30,000 made by the AAC on the view that in doing so the AAC had exceeded his jurisdiction. At the instance of the Revenue, the Tribunal was directed by the High Court of Madhya Pradesh to refer the following questions of law for opinion :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the sum of Rs. 2,30,000 freshly added by the AAC ?

(2) Whether the sum of Rs. 2,30,000 was added by the AAC on new sources of income or items not considered by the ITO from the point of view of assessability ?

(3) Whether the AAC had no jurisdiction or power to enhance the sum of Rs. 2,30,000 under the facts and circumstances in which he has added the same ?"

By the impugned judgment dt. 28th Feb., 1980, the High Court answered these questions against the Revenue. The High Court has held that the AAC had no jurisdiction to consider the new entries which were not considered at all by the ITO and to add the amount of Rs. 2,30,000 to the total income of the assessee. According to the High Court, the items containing that amount constituted new sources of income which were not the subject-matter of assessment before the ITO and, therefore, it was not open in appeal to consider these sources and to assess them. In taking this view, the High Court has placed reliance on the decision of this Court in Addl. CIT vs. Gurjargravures (P) Ltd. [1978]111ITR1(SC) , wherein it was held that the AAC had no power to grant exemption under s. 84 of the Act since the ITO did not consider the item from the point of view of its non-taxability. Feeling aggrieved by the said decision of the High Court, the Revenue has filed this appeal.

2. Shri Ranbir Chandra, learned counsel appearing for the Revenue, has submitted that the High Court was in error in construing narrowly the powers conferred on the AAC under s. 251 of the Act. Learned counsel has pointed out that the decision in Addl. CIT vs. Gurjargravures (P) Ltd. (supra), on which reliance has been placed by the High Court, was a decision of a two-judge Bench and that its correctness has been doubted by a Bench of three judges in Jute Corporation of India Ltd. vs. CIT [1991]187ITR688(SC)

In CIT vs . Kanpur Coal Syndicate [1964]53ITR225(SC) , which was also a decision of a three-judge Bench wherein the scope of s. 31(3)(a) of the Indian IT Act, 1922 (which was almost identical to s. 251(1)(a) of the 1961, Act) was considered and it was held :

"If an appeal lies, s. 31 of the Act describes the powers of the AAC in such an appeal. Under s. 31(3)(a), in disposing of such an appeal, the AAC may, in the case of an order of assessment, confirm, reduce, enhance or annual the assessment; under cl. (b) thereof he may set aside the assessment and direct the ITO to make a fresh assessment. The AAC has, therefore, plenary powers in disposing of an appeal. The scope of his power is coterminous with that of the ITO. He can do what the ITO can do and also direct him to do what he has failed to do."

After referring to these observations, this Court in Jute Corporation of India Ltd. (supra) has stated :

"The above observations are squarely applicable in the interpretation of s. 251(1)(a) of the Act. The declaration of law is clear that the power of the AAC is coterminous with that of the ITO, and if that is so, there appears to be no reason as to why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the ITO. No exception could be taken to this view as the Act does not place any restriction or limitation on the exercise of appellate power. Even otherwise, an appellate authority while hearing the appeal against the order of a subordinate authority, has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitation, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There appears to be no good reason and none was placed before us to justify curtailment of the power of the AAC in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the ITO."

Taking note of the decision in Addl. CIT vs. Gurjargravures (P) Ltd. (supra), the Court has said :

"Apparently, this view taken by the two-judge Bench of this Court appears to be in conflict with the view taken by the three-judge Bench of this Court in Kanpur Coal Syndicates case [1964]53ITR225(SC) It appears from the report of the decision in the Gujarat case that the three-judge Bench decision in Kanpur Coal Syndicate case (supra), was not brought to the notice of the Bench in Gurjargravures (P) Ltd. [1978]111ITR1(SC) In the circumstances, the view of the larger Bench in Kanpur Coal Syndicate case (supra) holds the field."

3. Having regard to the decision in Jute Corporation of India Ltd. (supra), it must be held that the High Court was in error in holding that the appellate power conferred on the AAC under s. 251 was confined to the matter which had been considered by the ITO and the AAC exceeded his jurisdiction in making an addition of Rs. 2,30,000 on the basis of the other 10 items of hundis which had not been explained by the assessee. This means that even if question No. 2 is answered in the affirmative, questions Nos. 1 and 3 must be answered in the negative. The appeal is, therefore, allowed, the impugned judgment of the High Court in so far as it relates to question Nos. 1 and 3 is set aside and the said questions are answered in the negative, i.e., in favour of the Revenue and against the assessee. No order as to costs.