(2004) 09 AHC CK 0104

In the Allahabad High Court

Case No : IT Reference No. 14 of 1985 28 September 2004 & Income-tax Reference No. 14 of 1985

Commissioner of Income Tax APPELLANT

Vs

Prakashwati RESPONDENT

Date of Decision : 28-09-2004

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 263, 263(1)

Citation : (2005) 276 ITR 575

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Division Bench

Advocate : A.N. Mahajan, for the Appellant; Abhinav Upadhaya, for the Respondent

Judgement

R.K. Agrawal, J.—The Income Tax Appellate Tribunal, Delhi has referred the following questions of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for opinion to this court:

"1. Whether the Tribunal was correct in holding that the report of the Valuation Officer was not part of the record for the purposes of action u/s 263 of the Income Tax Act, 1961?

2. Whether on the facts and in the circumstances of the case, the learned Tribunal was legally correct in cancelling the Commissioner of income tax''s order dated April 12, 1982, u/s 263(1) of the Income Tax Act, 1961, holding it to be without jurisdiction and invalid?"

2. Briefly stated, the facts giving rise to the present reference are as follows:

The respondent-assessee is an individual. The reference relates to the assessment years 1976-77 to 1980-81. The respondent-assessee had purchased an old house for a sum of Rs. 81,000 during the financial year 1976-77. It was demolished and a new construction was undertaken. The construction was completed in the financial year 1979-80, relevant to the assessment year

1980-81. The assessee had shown an investment of Rs. 1,66,860 which was made out of withdrawal from the firm M/s. Umrao Singh Makhan Lal, Najibabad. The Income Tax Officer valued the property on the basis of the report submitted by the Income Tax Inspector at Rs. 1,87,660 and the difference of Rs. 20,800 was added towards the income of the assessee in the assessment year 1980-81. In respect of the Wealth-tax proceeding, the Wealth-tax Officer referred the matter to the Valuation Officer for determining the value of the property. The Wealth-tax Officer determined the value of the property as on March 31, 1980, at Rs. 6,00,000 when the building was not even complete. Considering the report of the Valuation Officer, the Commissioner of Income Tax initiated proceedings u/s 263 of the Act on the ground that the assessment was erroneous and also prejudicial to the interest of the Revenue and after giving an opportunity of hearing to the assessee, vide order dated April 12, 1982, restored the assessment to the file of the Income Tax Officer. Feeling aggrieved, the respondent preferred separate appeals before the Tribunal. The Tribunal had held that u/s 263(1) of the Act, the Assessing Officer has to examine the record as it stood at the time when the assessment order was passed by the Income Tax Officer and not the record as it stood at the time of examination by the Commissioner. Since the report of the Valuation Officer was not in existence at the time when the Income Tax Officer had passed the assessment order in question, it could not and did not form part of the record on which the order of the Income Tax Officer was based, hence the order passed u/s 263(1) of the Act was without jurisdiction and invalid. The Tribunal consequently cancelled the order dated April 12, 1982, passed by the Commissioner of Income Tax.

3. We have heard Sri A. N. Mahajan, learned standing counsel for the Revenue, and Sri Abhinav Upadhaya who has put in appearance on behalf of the respondent.

4. Learned counsel for the Revenue submitted that under Clause (b) of the Explanation to Sub-section (1) of Section 263 of the Act "record" has been defined "to include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Commissioner". The phrase "shall include and shall be deemed always to have included" in Clause (b) was substituted for "includes" by the Finance Act, 1.989, with effect from June 1, 1988.

5. The apex court in the case of Commissioner of Income Tax, Bangalore Vs. Shree Manjunatheaware Packing Products and Camphor Works, has held that in view of the clear words used in Clause (b) of the Explanation to Section 263(1) while calling for and examining the record of any proceeding u/s 263(1), it is and it was open to the Commissioner not only to consider the record of that proceeding but also the record relating to that proceeding available to him at the time of examination.

6. Respectfully following the aforesaid decision, we are of the considered opinion that the Tribunal was not justified in limiting the record which was available

before the Income Tax Officer at the time of assessment. The Commissioner was well within his jurisdiction to take into consideration the report of the Valuation Officer which was available to him at the time of examination for the purpose of initiating the proceeding u/s 263(1) of the Act.

7. In view of the foregoing discussion, we answer the questions of law referred to us in the negative, i.e., in favour of the Revenue and against the assessee. There shall be no order as to costs.