(1996) 02 MP CK 0031

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 242 of 1989

Commissioner of Income Tax — APPELLANT

Vs

Princess Usha Devi Trust — RESPONDENT

Date of Decision : 15-02-1996

Acts Referred:
Income Tax Act, 1961 — Section 256

Citation : (1996) 222 ITR 137

Hon'ble Judges : N.K. Jain, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : D.D. Vyas, for the Appellant; J.W. Mahajan, for the Respondent

Judgement

A.R. Tiwari, J.—The aforesaid miscellaneous civil cases, registered on applications u/s 256(2) of the Income Tax Act, 1961 (for short, "the Act"), presented by the applicant (Commissioner of income tax) are connected matters.

2. Briefly stated, the facts of the case are that the assessee is a private trust and is assessed for different years. The trust is created by the late Maharaja Yeshwantrao Holkar on April 10, 1950. By the deed of the trust, the trustees were saddled with certain obligations. For earlier assessment years, the matter was litigated up to this court. This court, vide its order dated March 19, 1983--Princess Usha Trust Vs. Commissioner of Income Tax, , held that the Maharani Usha Devi has transferred her beneficial interest in the trust on March 30, 1977, and, therefore, the trust stood extinguished. No liability of Income Tax or wealth-tax can be imposed on the trust which had stood extinguished. Following the decision of the High Court, the Commissioner of Income Tax (Appeals) cancelled the assessment for the years 1977-78, 1978-79, 1981-82 and 1982-83. Aggrieved the applicant/Department filed appeals before the Tribunal. The appeals were decided against the applicant. The applicant then filed applications u/s 256(1) of the Act seeking statement of cases and reference of the common question as extracted below :

"Whether, on the facts and in the circumstances of the case, the Tribunal is justified in dismissing the Departmental appeal when the decision of the Madhya Pradesh High Court in Princess Usha Trust Vs. Commissioner of Income Tax, was not accepted by the Department ?"

3. As the applications were rejected, the applicant filed these applications in this court u/s 256(2) of the Act.

4. We have heard Shri D. D. Vyas, learned counsel for the applicant/ Department, and Shri J. W. Mahajan, learned counsel for the non-applicant/ assessee, in all these cases.

The Tribunal dismissed the appeals in the following terms :

"In view of the judgment of the Madhya Pradesh High Court in the case of Princess Usha Trust Vs. Commissioner of Income Tax, holding that the assessee-trust was extinguished, the Commissioner of Income Tax (Appeals) cancelled the assessments for the assessment years 1977-78,1978-79, 1981-82 and 1982-83. Aggrieved by the orders of the Commissioner of Income Tax (Appeals), the Department, has come up in appeal just to keep the matter alive since the SLP has been filed by the Department before the Supreme Court against the said judgment of the Madhya Pradesh High Court. However, in view of the judgment of the Madhya Pradesh High Court, we find no merit in these appeals.

2. The assessee filed cross-objections in these appeals alternatively challenging the quantum of assessment of income. Since the cancellation made of assessments made by the Commissioner of Income Tax (Appeals) is upheld, it is not necessary to consider the cross-objections on merit. The cross-objections deserve to be dismissed.

3. In the result, the appeals and the cross-objections are dismissed."

5. The only ground urged by counsel for the applicant is that the SLP is filed by the Department before the Supreme Court against the decision of this court in Princess Usha Trust Vs. Commissioner of Income Tax, , which is the linchpin of the orders of the Tribunal.

6. It is held by this court in Commissioner of Wealth-tax Vs. Smt. Usha Devi (Lrs. of H.H. Maharaja Yeshwant Rao Holkar), , Miscellaneous Civil Case No. 125 of 1988 and Miscellaneous Civil Case No. 48 of 1985 (sic)--Ganga Cut Piece Centre v. CIT, that pendency of the same issue before the Supreme Court is no ground for directing the reference. The point of controversy was decided by this court against the Department and the Tribunal passed the orders on following these decisions. In such a situation, it cannot be said that a referable question of law arose from the orders of the Tribunal. The Tribunal rejected the applications u/s 256(1) of the Act after placing reliance on Commissioner of Wealth-tax Vs. Jambu Kumar Singh Kasliwal, ; COMMISSIONER OF Income Tax Vs. K. S. R. T. C. PENSION AND GRATUITY FUND TRUST., ; Commissioner of Income Tax Vs. Carborandum Universal Ltd., and Commissioner of Income Tax Vs. Murti Devi

Pradeep Kumar, , that the factum of filing of SLP in the Supreme Court from the decision of this court is not a valid ground to state the cases and refer the question as the question stands decided.

7. In view of the aforesaid position, we find that these applications are devoid of merit and deserve the fate of dismissal.

8. In the result, we decline to call upon the Tribunal to state the cases and refer the common question as proposed. Accordingly, we dismiss all these applications leaving the applicant free to resort to appropriate remedy when occasion so arises and if permissible under the law.

9. The applications are accordingly dismissed but with no order as to costs.

10. Counsel fee for each side in each case is, however, fixed at Rs. 750, if certified.

11. Retain this order in Miscellaneous Civil Case No. 242 of 1989, and place its copy each in the connected miscellaneous civil cases, as particularised above, for ready reference.

