
(2013) 02 MP CK 0110
In the Madhya Pradesh High Court
Case No : M.A.I.T. No. 18 of 2005

Commissioner of Income Tax	Vs	APPELLANT
Ramkishore Nandkishore		RESPONDENT

Date of Decision : 12-02-2013

Acts Referred:

Income Tax Act, 1961 — Section 139(1), 27(1)(a)

Citation : (2013) ILR (MP) 628

Hon'ble Judges : M.A. Siddiqui, J; Krishn Kumar Lahoti, J

Bench : Division Bench

Advocate : Sanjay Lal, for the Appellant; Sandesh Jain, for the Respondent

Judgement

Krishn Kumar Lahoti, J.—In M.A.I.T. 18 of 2005 following substantial questions of law were framed on 6.5.2005:-

1. Whether on the facts and in the circumstances of the case the Hon. ITAT was justified in law in deleting the levy of penalty u/s. 27(1)(a) on the grounds that returns filed on these years were accepted even though it was beyond the limit prescribed u/s 139(1)?

2. Whether the Tribunal could allow the appeal without assigning any reason by mere recording the submissions of the appellant and respondent?

In M.A.I.T. 22 of 2005, following substantial questions of law were framed for consideration:-

1. Whether on the facts and in the circumstances of the case the Hon. ITAT was justified in law in deleting the levy of penalty u/s. 27(1)(a) on the grounds that returns filed on these years were accepted even though it was beyond the limit prescribed u/s 139(1)?

3. Whether the Tribunal could allow the appeal without assigning any reason by mere recording the submissions of the appellant and respondent?\\

2. Learned counsel appearing for the respondent submits that in M.A.I.T. No. 18 of 2005, tax impact is Rs. 43,000/- while in M.A.I.T. No. 22 of 2005, tax impact is Rs. 15,360/- and as per the Board instruction 1997 dated 27.3.2000 the Board had issued instructions that the appeals will be filed only in cases where the tax effect exceeds the monetary limit beyond Rs. 2 lakh in the High Court U/s. 260-A or reference U/s. 256(2) of the Income Tax Act.

3. Stating aforesaid, it was submitted by Shri Jain that in these appeals, tax effect is less than Rs. 2 lakh and may be dismissed only on this ground. He has relied on the two Division Bench judgments of this Court in Commissioner of Income Tax Vs. Suresh Chand Goyal, and Commissioner, Income Tax Vs. Ashok Kumar Manibhai Patel and Co., in support of his contention.

4. Shri Lal learned counsel appearing for the appellant though opposed the aforesaid prayer but could not refute the contention of the appellant that by the Board instructions No. 1979 dated 27.3.2000, the Board had specifically directed that the Department shall file appeal only in cases where tax effect exceeds monetary limits of Rs. 2 lakh in the matter of High Court.

The instructions issued by this Board reads thus:-

Monetary limits for filing Departmental appeals/references before income tax Appellate Tribunal, High Courts and Supreme Court-Measures for reducing litigation.

Reference is invited to the Board's Instruction No. 1903, dated 28th October, 1992, (See Clarification Five) and Instruction No. 1777, dated 4th November 1987, (See Clarification Five) wherein monetary limits of Rs. 25,000 for Departmental appeals (in income tax matters) before the Appellate Tribunal, Rs. 50,000 for filing reference to the High Court and Rs. 1,50,000 for filing appeal to the Supreme Court were laid down.

2. In supersession of the above instruction, it has now been decided by the Board that appeals will be filed only in cases where the tax effect exceeds the revised monetary limits given hereunder:

The new monetary limits would apply with reference to each case taken singly. In other words, in group cases, each case should individually satisfy the new monetary limits. The working out of monetary limits will therefore not take into consideration the cumulative revenue effect as envisaged in the Board's earlier instruction referred to above.

3. Adverse judgments relating to the following should be contested irrespective of revenue effect:

(i) Where Revenue audit objection in the case has been accepted by the Department.

(ii) Where the Board's order, notification, instruction or circular is the subject matter of an adverse order.

(iii) Where prosecution proceedings are contemplated against the assessee.

(iv) Where the constitutional validity of the provisions of the Act are under challenge.

4. Special leave petitions under Article 136 of the Constitution are filed before the Supreme Court only in consultation with the Ministry of Law. Therefore, where the Chief Commissioner decides to contest an adverse judgment by filing SLP before the Supreme Court, they should send the proposal to the Board for further processing.

5. These instructions will apply to litigation under other direct taxes also, e.g., Wealth-tax, Gift-tax, Estate duty, etc.

6. These monetary limits will not apply to writ matters.

7. This instruction will come into effect from April 1, 2000. Instruction: No. 1979 [F. No. 279/126/98-IT], dated 27-3-2000. [See Asstt. CIT v. Nimeshchandra v. Vashi (ITA No. 2794/Ahd./2003, dated 6-1-2005)].

5. A Division Bench of this Court in Suresh Chand Goyal (*supra*) has considered this aspect and held thus:-

The another question raised by learned counsel for the respondent is about the filing of appeal contrary to the circular issued by the Central Board of Direct Taxes, according to which, the appeal u/s 260A of the income tax Act on the tax effect of less than Rs. 2 lakhs should not be filed by the Revenue and placed reliance on the decision of the Bombay High Court in the case of Commissioner of Income Tax Vs. Camco Colour Co., Learned counsel for the respondent also relied upon the decisions of the Supreme Court in the cases of Navnitlal C. Javeri Vs. K.K. Sen, Appellate Assistant Commissioner of Income Tax, "D" Range, Bombay, , Ellerman Lines Ltd. Vs. Commissioner of Income Tax, West Bengal, Calcutta, and K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, , to contend that the circular issued by the Central Board of Direct Taxes is binding on all the officers and Commissioners and appeal or reference contrary to the instructions issued in the circular will not be considered by the courts and the Division Bench of the Bombay High Court was satisfied that the Board has taken a policy decision not to file appeal in a type of case in hand and the same is binding on the Revenue and in the result the appeal was dismissed following the circular. The similar view was taken by the Division Bench of the High Court of Madhya Pradesh in the case of Asst. CIT v. Aradhana Oil Mills [2002] 30 ITC 446 and following the circular of the Central Board of Direct Taxes, the appeal was dismissed.

6. In Ashok Manibhai Patel (*supra*) another Division Bench has also taken similar view. Justice Dipak Misra, as his Lordship then was, speaking for the Bench held thus:-

11. The factual scenario can be perceived from another aspect. Submission of Mr.

A.K. Shrivastava, learned counsel for the respondent is that the tax impact is Rs. 52,565 and, therefore, as per the circular of the Central Board of Direct Taxes the reference need not be adverted to. A Division Bench of the High Court of Bombay in the case of *The Commissioner of Income Tax Vs. Pithwa Engg. Works*, in paragraph 6 expressed the view as under (page 520):

"This court can very well take judicial notice of the fact that by passage of time money value has gone down, the cost of litigation expenses has gone up, the assessee on the file of Department has also increased to a tremendous extent. The corridors of the superior courts are choked with huge pendency of cases. In this view of the matter, the Board has rightly taken a decision not to file references if the tax effect less than Rs. 2 lakhs. The same policy for old matters needs to be adopted by the Department. In our view, the Board's circular dated March 27, 2000, is very much applicable even to the old references which are still undecided. The department is not justified in proceeding with the old references wherein the tax impact is minimal. Thus, there is no justification to proceed with decades old references having negligible tax effect

Judged from both angles we would answer the reference in the negative in favour of the assessee and against the Revenue.

7. A Division Bench of Bombay High Court in *The Commissioner of Income Tax Vs. Pithwa Engg. Works*, held thus:-

3. This Court in the case of *Commissioner of Income Tax Vs. Camco Colour Co.*, ruled that the instructions issued by the Central Board of Direct Taxes, New Delhi, dated 27th March, 2000; wherein monetary limit for the department for filing reference to the High Court earlier fixed for Rs. 50,000/- came to be revised and fresh instructions are issued to file references only in cases where tax effect exceeds Rs. 2,00,000/-, are binding on the Department.

4. The above instructions dated 27th March, 2000 reflect the policy decision taken by the Board not to raise questions of law where the tax effect is less than the amount prescribed in the above circular with a view to reduce litigations before High Courts and Supreme Court. The said circular is binding on the Revenue though learned Counsel tried to contend that the said circular is not applicable to the old referred cases. However, he could not take his submission to a logical end.

5. One fails to understand how Revenue can contend that so far as new cases are concerned, circular issued by the Board is binding on them and in compliance with the said instructions, they do not file references if the tax effect is less than Rs. 2 lakhs. But the same approach is not adopted with respect to the old referred cases even if the tax effect is less than Rs. 2 lakhs. In our view, there is no logic behind this approach.

6. This Court can very well take judicial notice of the fact that by passage of time money value has gone down, cost of litigation expenses has gone up, the

assesseees on the file of the departments have increased; consequently, burden on the department has also increased to a tremendous extent. The corridors of the superior courts are choked with huge pendency of cases. In this view of the matter, the Board has rightly taken decision not to file references if the tax effect less than Rs. 2 lakhs. The same policy for old matters needs to be adopted by the department. In our view, the Board's circular dated 27th March, 2000 is very much applicable even to the old references which are still undecided. The department is not justified in proceeding with the old references wherein the tax impact is minimal. Thus, there is no justification to proceed with the decades old references having negligible tax effect.

8. The aforesaid judgments specifically lays down that any appeal, if tax effect less than Rs. 2 lakhs, could not have been filed by the Department.

9. From the perusal of the instructions issued by the Board, we find that the Board had issued directions that the appeals will be filed only in cases where the tax effect exceeds Rs. 2 lakhs in the matter of High Court in appeals U/s. 260A or Reference U/s. 256(2). The aforesaid circular is binding on all the authorities under the Board including the appellant Commissioner of Income Tax, Jabalpur. The Board had taken this decision in continuation to earlier directions issued by the Board on 28.10.1992 where the monetary limit was Rs. 50,000/-. Now in view of the changed circumstances, as directed by the Board by instruction dated 27.3.2000, it is apparent that the appeal or reference below Rs. 2 lakhs, could not have been filed. The instructions of the Board are binding to all the authorities working under the Board including the appellant. This appeal which was filed on 10.1.2005 is fully covered by the instructions issued by the Board on 27.3.2000, and this appeal could not have been filed. The aforesaid position has been clarified by two Division Bench of this Court in Suresh Chand and Ashok Manibhai (supra). In the result, this appeal is found incompetent and is dismissed with no order as to costs.