
(1996) 02 MP CK 0077

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 19 of 1990

Commissioner of Income Tax

APPELLANT

Vs

S. Khushal Singh

RESPONDENT

Date of Decision : 06-02-1996

Acts Referred:

Income Tax Act, 1961 — Section 144B, 263

Citation : (1997) 1 MPLJ 530 : (1996) 86 TAXMAN 504

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

Bench : Division Bench

Advocate : D.D. Vyas, for the Appellant; No appearance, for the Respondent

Judgement

A.R. Tiwari, J.

On application u/s 256(1) of the Income Tax Act, 1961 (for short "the Act"), registered as RA No. 16/Ind/88, for the Assessment Year 1979-80, the Tribunal stated the case and referred the under noted question of law for our opinion with reference to the order passed in ITA No. 978/Ind/84 :-

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the Commissioner had no jurisdiction to revise u/s 263 of the Income Tax Act, 1961 an assessment order passed by the ITO in accordance with the directions issued to him by the IAC of Income Tax u/s 144B of the Income Tax Act, 1961?"

Facts lie in a narrow compass. The year of assessment is 1979-80. The assessment was framed in the status of individual. It was framed in accordance with the directions of the IAC u/s 144B of the Act. The Commissioner of Income Tax considered the said order erroneous and prejudicial to the interest of the revenue. He, therefore, initiated proceedings u/s 263 of the Act and directed the ITO to include the amount of interest of Rs. 1,12,304.00 in the taxable income of the assessee. He also directed the ITO to verily as to whether the court expenses of Rs. 18,858.00 should be added to the taxable income (Annexure "A"). The

assessee then filed the appeal before the Tribunal and took the objections that the ITO having framed the assessment order in conformity with the directions of the IAC u/s 144B of the Act, the Commissioner of Income Tax was not competent to resort to section 263 as the order tantamounted in substance to that of the IAC. The Tribunal upheld the objections of the assessee and held that the Commissioner of Income Tax had no jurisdiction to revise the assessment order u/s 263 (Annexure "B"). The Tribunal, therefore, allowed the appeal in part. Aggrieved, the applicant/revenue filed the application u/s 256(1) of the Act. On that application, the Tribunal stated the case and referred the aforesaid question of law for our opinion.

We have heard Shri D. D. Vyas, learned counsel for the applicant/revenue. None appeared for the non-applicant/assessee.

Section 263 of the Act provides as under :-

"263. Revision of orders prejudicial to revenue. - (1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment."

Explanation to this section was inserted by the Taxation Laws (Amendment) Act, 1984 with effect from 1-10-1984. Thereafter new Explanation has been substituted by the Finance Act, 1988 with effect from 1-6-1988. Effective from 1-10-1984, Explanation No. (a) was inserted as noted below :-

"Explanation. - For the removal of doubts, it is hereby declared that, for the purposes of this sub-section, an order passed by the Assessing Officer shall include -

(a) an order of assessment made on the basis of directions issued by the Deputy Commissioner u/s 144A or section 144B; and."

It may also be stated that section 144B, which was inserted by Taxation Laws (Amendment) Act, 1975 with effect from 1-4-1976, now stands omitted by the Direct Tax Laws (Amendment) Act, 1987 with effect from 1-4-1989.

In Shri Chaman Singh and Another Vs. Srimathi Jaikaur, , the Supreme Court observed that it is well settled that if a statute is curative or merely declares the previous law, retroactive operation would be more rightly ascribed to it. By the aforesaid Explanation, what was implicit, was made explicit. It was added to remove the doubt that for the purpose of sub-section (1) of section 263, an order passed by the ITO shall include an order of assessment made on the basis of the directions issued by the Inspecting Assistant Commissioner (I.A.C.) u/s 144B of the Act.

The point, in our view, stands concluded in favour of the department by decision in Commissioner of Income Tax Vs. Vithal Textiles, . In this decision, it is held as under :-

"Held, that the Commissioner of Income Tax can revise an order of assessment passed by the Income Tax Officer in accordance with the directions issued to him by the Inspecting Assistant Commissioner u/s 144B. The Tribunal was not right in setting aside the order of the Commissioner of Income Tax."

In view of the aforesaid trite position of law, we hold that the Tribunal was not right in holding that the Commissioner lacked jurisdiction to revise u/s 263 of the Act an assessment order passed by the ITO in accordance with the directions issued to him by the IAC u/s 144B of the Act.

In view of the explanation, which is clarificatory in nature and thus curative and in view of the decisions mentioned aforesaid, we hold that the Tribunal was not right.

Accordingly, we answer the question in the negative, i.e. in favour of the revenue and against the assessee.

The question is answered accordingly.

The reference application is decided in terms indicated above but without any order as to costs.

Counsel fee for the applicant is, however, fixed at Rs. 750-00, if certified.

Transmit a copy of this order to the Tribunal for further action in the matter. Reference answered in favour of Revenue.