(1989) 03 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 380 of 1986

Commissioner of Income Tax — APPELLANT

Vs

Satish Kumar and Co. — RESPONDENT

Date of Decision : 10-03-1989

Acts Referred:
Income Tax Act, 1961 — Section 144B, 263

Citation : (1990) 181 ITR 57

Hon'ble Judges : G.G. Sohani, Acting C.J.;R.K. Verma, J

Bench : Division Bench

Advocate : R.C. Mukati, for the Appellant; T.N. Singh, for the Respondent

Judgement

G.G. Sohani, Actg. C.J.

1. By this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the income tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in vacating the order passed by the Commissioner u/s 263 of the Income Tax Act ?"

2. The material facts giving rise to this reference, briefly, are as follows :

For the assessment year 1978-79, the Income Tax Officer framed the assessment in accordance with the directions given by the Inspecting Assistant Commissioner u/s 144B of the Act. The Commissioner of Income Tax, exercising powers u/s 263 of the Act, set aside the order passed by the Income Tax Officer and directed the Income Tax Officer to make a fresh assessment according to law. Aggrieved by the order passed by the Commissioner, the assessee preferred an appeal before the Tribunal. The Tribunal upheld the objection raised on behalf of the assessee that when the assessment was framed by the Income Tax Officer in accordance with the directions of the Inspecting Assistant Commissioner u/s 144B of the Act, the Commissioner had no jurisdiction to revise the order of the Income Tax Officer u/s 263 of the Act. In this view of the matter, the Tribunal allowed the appeal and set aside the order passed by the Commissioner. Aggrieved by the order passed by the Tribunal, the Revenue sought reference and it is at the instance of the Revenue that the aforesaid question of law has been referred to this court for its opinion.

3. In Commissioner of Income Tax Vs. Vithal Textiles, a Division Bench of this court has held that the Commissioner has jurisdiction u/s 263 of the Act, to revise an order passed by the Income Tax Officer in accordance with the directions given by the Inspecting Assistant Commissioner u/s 144B of the Act. We see no cogent reason to differ from the view taken in Commissioner of Income Tax Vs. Vithal Textiles, . In this view of the matter, therefore, it must be held that the Tribunal was not justified in law in setting aside the order passed by the Commissioner u/s 263 of the Act, on the ground that he had no jurisdiction to revise that order as it was passed in accordance with the directions of the Inspecting Assistant Commissioner u/s 144B of the Act. Learned counsel for the assessee contended that, on merits, the Commissioner of Income Tax was not justified u/s 263 of the Act in setting aside the order passed by the Income Tax Officer as the order passed by the Income Tax Officer was not erroneous and prejudicial to the interests of the Revenue. It is not necessary for us to go into this question raised on behalf of the assessee because this question does not arise out of the order passed by the Tribunal and has not been referred to this court . It was also contended that we should decline to answer the question of law referred to this court as it is purely academic. The contention cannot be upheld. The; Tribunal set aside the order passed by the Commissioner on the ground that he had no jurisdiction u/s 263 of the Act to revise the order of the Income Tax Officer passed in accordance with the directions of the Inspecting Assistant Commissioner u/s 144B of the Act. The question of law arising out of the order passed by the Tribunal has, therefore, been referred to this court at the instance of the Revenue and it cannot be held that the said question is merely academic.

4. For all these reasons, our answer to the question referred to this court is in the negative and against the assessee. In the circumstances of the case, parties shall bear their own costs of this reference.