(1986) 10 MP CK 0037

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 173 of 1981

Commissioner of Income Tax — APPELLANT

Vs

Simplex Metalica — RESPONDENT

Date of Decision : 07-10-1986

Acts Referred:
Income Tax Act, 1961 — Section 263

Citation : (1987) 61 CTR 205 : (1987) 164 ITR 202 : (1987) 32 MPLJ 294 : (1987) MPLJ 294

Hon'ble Judges : G.G.Sohani, Acting C.J.;S.K. Seth, J;Faizanuddin, J;C.P. Sen, J;B.C. Verma, J

Bench : Full Bench

Advocate : B.K. Rawat, for the Appellant; B.L. Nema, for the Respondent

Judgement

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

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

"Whether, on the facts and keeping in view the order of the Appellate Assistant Commissioner dated June 1, 1978, the Appellate Tribunal was justified in holding that the assessment order has merged with the order of the Appellate Assistant Commissioner particularly when the point of cash credit was not the subject of an appeal by the assessee before the Appellate Assistant Commissioner ?"

The material facts giving rise to this reference briefly are as follows I While framing the assessment for the assessment year 1975-76, the Income Tax Officer called upon the assessee to prove the genuineness of nine cash credits in different names in the accounts of the assessee. The assessee produced confirmatory letters from creditors which were accepted by the Income Tax Officer. Aggrieved by a part of the order passed by the Income Tax Officer, the assessee preferred an appeal before the Appellate Assistant Commissioner which was decided on June 1, 1978. Thereafter, the Commissioner in exercise of powers conferred by Section 263 of the Act, set aside the order of assessment according to law. Aggrieved by the order passed by the Commissioner, the assessee preferred an appeal before the Tribunal. The Tribunal held that the order of the Income Tax Officer got merged with the order of the Appellate Assistant Commissioner and the Commissioner had no jurisdiction to revise it u/s 263 of the Act. Aggrieved by that order, the Revenue sought a 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.

When the reference came up for hearing before a Division Bench of this court on February 1, 1985, the Division Bench directed that the reference be heard along with M.C.C. No. 99 of 1980 (supra p. 203) which was to be heard by a larger Bench and where a similar question was referred to this court for its opinion.

As held by us in M.C.C. No. 99 of 1980 (CIT v. K.L. Rajput [1987] 164 ITR 203), which we have decided today, the question framed by the Tribunal is too wide and it does not bring out the real issue which arose before the Tribunal. We, therefore, reframe that question as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the Commissioner was not competent u/s 263 of the Act to set aside the entire order of assessment passed by the Income Tax Officer when that order was the subject-matter of an appeal preferred by the assessee before the Appellate Assistant Commissioner ?"

For reasons stated in our judgment delivered today in M.C.C. No. 99 of 1980 1987 164 ITR 203, our answer to the question framed by us is in the affirmative and in favour of the assessee.

In the circumstances of the case, parties shall bear their own costs of the reference.