(1986) 09 PAT CK 0042

In the Patna High Court

Case No : Taxation Case No. 37 of 1978

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

SMT. DEVI. — RESPONDENT

Date of Decision : 12-09-1986

Acts Referred:
Income Tax Act, 1961 — Section 143, 256, 263

Citation : (1987) 59 CTR 3 : (1987) 32 TAXMAN 521

Judgement

By the Court - This Reference under s. 256(1) of the IT Act (hereinafter to be referred to as the Act) relates to the asst. yr. 1971-72. The assessee is a lady. The questions referred to us for our opinion are as follows :

1. Whether, on the facts and in the circumstances of the case, the Tribunal has rightly held that the assessment order, having been passed by the ITO after necessary enquiries in pursuance of the "Scheme to help the new taxpayers in small income groups" launched by the Government, was not erroneous so as to enable the CIT to assume jurisdiction under s. 263(1) of the IT Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal has rightly held that the Commissioner of Income Tax did not follow the principles of natural justice before passing the impugned order and so his order is not valid ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal has rightly held that the impugned order of the CIT is based upon mere surmises and conjectures and is, therefore, not valid ?

4. Whether, in view of the decision of the Income Tax Appellate Tribunal, Patna in the case of "Smt. Rambha Devi v. ITO (I.T. Nos. 1713 to 1715 of 1974-75), the Tribunal has rightly held that the CIT acting under s. 263(1) of the IT Act, 1961, could not legally set aside an order of the assessment made under s. 143(1) in pursuance of the "Schedule to help the new taxpayers in small income groups" evolved by the Government ?

5. Whether, on the facts and in the circumstances of the case, the Tribunal has

rightly cancelled the consolidated order passed by the CIT under s. 263(1) of the IT Act, 1961, for the asst. yr. 1971-72 ?

2. The present Reference is fully covered by our decisions in the cases of the CIT, Bihar-II, Patna v. Pushpa Devi (Taxation Case Nos. 93 to 98 of 1978 disposed of on 13-6-1986) (since reported in CTR (1986) 56 Pat 251 and the CIT, Bihar-II, Patna v. Smt. Rambha Devi (Taxation Case Nos. 21 to 23 of 1978 disposed of on 4-9-1986).

3. The assessee was assessed in terms of the Scheme doled out by the CBDT. In terms of the Scheme, the assessees who had not filed Return till 1972 were given the option to file Returns and the ITOs were required to go to the place where the assessee resided and make assessment on the spot without recourse to the provisions of s. 143(1) of the Act. The condition for application of the Scheme was that the income during the assessment year should not exceed Rs. 15,000 and the initial capital investment should not exceed Rs. 25,000. The Scheme was given effect to. The Scheme clearly laid down that it would not apply to ladies and minors. In terms of the Scheme, the ITO(s) went to different places and pursuaded the persons to file Return. The assessee was one such case. She filed Return and was immediately assessed on a total income of Rs. 5,100 as envisaged in the Scheme. When the fact of assessment of the assessee came to the notice of the CIT, he cancelled the order of assessment and directed the ITO concerned to make a fresh assessment after complying with the provisions of s. 143(1) of the Act after making proper enquiry/verification. The assessee being aggrieved by the order of the CIT, cancelling the assessment in terms of s. 263(1) of the Act, filed an appeal before the Tribunal. The latter set aside the order of the CIT holding that the assessments have been made after proper verification and, therefore, the Commissioner had no jurisdiction to cancel the assessment order passed by the ITO as it was neither erroneous nor prejudicial to the Revenue. On that basis the Tribunal held that the order under s. 263(1) of the Act was erroneous and illegal. The Revenue being aggrieved by the order of the Tribunal got the present reference like several others referred to this Court, for our opinion.

4. The points falling for consideration in this Reference were identical with those in the cases of Pushpa Devi (supra) and Smt. Rambha Devi (supra). In those cases we held that the Scheme did not apply to ladies and minors. In our view the ITOs were obliged to act in terms of s. 143(1) of the Act and to enquire into the source of initial capital investment. We also held that the decision of the Tribunal in the case of Smt. Rambha Devi v. ITO (I.T. Nos. 1713 to 1715 of 1974-75) have not been correctly decided. We are of the same view in this reference. The reference must, therefore, be answered in favour of the Revenue.

5. For the reasons mentioned in the earlier batch of cases decided by us, we hereby hold that the first question must be decided in favour of the Revenue and against the assessee. The Tribunal was not right in holding that the assessments had been done after necessary enquiries.

6. In regard to the second question, our view is that the Tribunal was not right in holding that the principles of natural justice had been violated. The Commissioner was not required to give a concluded finding showing that the income was really the income of the husband and the Return was meant to save the income of the husband from being assessed at a higher rate. The principles of natural justice had not been contravened in any manner.

7. In regard to the 3rd question, the Tribunal was not right in holding that the order of the Commissioner was based on surmises and conjectures. No enquiry had been held and, therefore, no concluded finding could be arrived at by the Commissioner and, therefore, there was no question of surmises and conjectures.

8. In regard to the 4th question, in our view, the decision of the Tribunal in the case of Smt. Rambha Devi (supra) was not correct. The Tribunal was not right in holding that the Commissioner could not set aside the assessment in pursuance of the Scheme.

9. In respect of the last question, we are of the view that the Tribunal was not right in cancelling the consolidated order of the Commissioner passed unders. 263(1) of the Act.

10. For the reasons stated above, all the questions are answered in favour of the Revenue and against the assessee. However, in the special circumstances of the case, there will be no order as to costs.