

(1995) 08 AHC CK 0100

In the Allahabad High Court

Case No : Income-tax Reference No. 47 of 1980

Commissioner of Income Tax

APPELLANT

Vs

Smt. Kamla Devi

RESPONDENT

Date of Decision : 28-08-1995

Acts Referred:

Income Tax Act, 1961 — Section 153, 263

Citation : (1996) 217 ITR 330 : (1995) 83 TAXMAN 575

Hon'ble Judges : V.K. Khare, J; S.R. Alam, J

Bench : Division Bench

Advocate : S. Srivastava, for the Appellant; Vikram Gulati, for the Respondent

Final Decision : Dismissed

Judgement

1. This is a reference u/s 256(1) of the Income Tax Act, 1961, at the instance of the Revenue to answer the following question of law :

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in holding that the assessment made on March 28, 1977 is barred by limitation ?"

2. The assessee is an individual and the question of law referred to us relates to the assessment years 1971-72 and 1972-73. For the said assessment years, the assessee filed returns of income which were accepted and consequently assessment orders were passed on December 31, 1971, and September 14, 1972, respectively. Subsequently, the Commissioner of Income Tax by order dated December 27, 1973, set aside the assessments made by the Income Tax Officer u/s 263 of the Act and the assessment proceedings were directed to be initiated afresh. The fresh assessments were made by the Income Tax Officer on March 26, 1977, for both the assessment years.

3. The assessee aggrieved against the assessment orders filed appeals before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner held that since the order of the Commissioner of Income Tax u/s 263 was passed

on December 27, 1973, the fresh assessments in pursuance of the order of the Commissioner of Income Tax should have been completed by March 31, 1976, and, therefore, the present assessments made on March 28, 1977, were barred by time. The Department filed a second appeal before the Appellate Tribunal which was subsequently dismissed. Sub-section (2A) of Section 153 of the Act runs as under :

"Notwithstanding anything contained in Sub-sections (1) and (2), in relation to the assessment year commencing on the 1st day of April, 1971, and any subsequent assessment year, an order of fresh assessment u/s 146 or in pursuance of an order, u/s 250, Section 254, Section 263 or Section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of two years from the end of the financial year in which the order u/s 146 cancelling the assessment is passed by the Assessing Officer or the order u/s 250 or Section 254 is received by the Chief Commissioner or Commissioner, or as the case may be, the order u/s 263 or Section 264 is passed by the Chief Commissioner or Commissioner."

4. A perusal of Sub-section (2A) of the Act shows that to pass an order of fresh assessment u/s 146 or in pursuance of an order, u/s 250, Section 254, Section 263 or Section 264 setting aside or cancelling an assessment at the instance of the Commissioner of Income Tax u/s 263 the fresh assessment proceedings have to be completed within two years of commencing (?) of such financial years.

5. Learned counsel appearing for the Revenue urged that since subsection (2A) of Section 153 used the word "may" and as such it is not mandatory on the part of the Income Tax Officer to complete the assessment proceedings within the time prescribed under Sub-section (2A) of Section 153 of the Act. This argument is devoid of merit. The word "may" refers to the exercise of the power by the Assessing Officer. A similar question came up for consideration before the Madhya Pradesh High Court in the case of Gulabchand Motilal v. CIT [1988] 174 ITR 117 , it was held that the language used in Sub-section (2A) of Section 153 of the Act is very clear and there is no ambiguity. In clear terms it is held that an order of fresh assessment passed by the Income Tax Officer in pursuance of the order passed u/s 263 setting aside or cancelling the earlier assessment order has to be passed within the period of two years prescribed therein. In the case of Shri Prem Nath Mayor Vs. Commissioner of Income Tax, , it was held that it is open to the Income Tax Officer to pass a fresh order of assessment within two years from the end of the financial year in which the order of remand is passed. We are in agreement with the decisions referred to above. The result of the discussion is that the Assessing Officer has to pass an order of assessment within two years from the date of passing of the order of the Commissioner of Income Tax (?) u/s 263 of the Act.

6. In view of what has been stated above, we answer the question referred to us in the affirmative and against the Revenue.