
(1986) 09 PAT CK 0001

In the Patna High Court

Case No : Taxation Case No's. 21 to 23 of 1978

Commissioner of Income Tax

APPELLANT

Vs

Smt. Rambha Devi

RESPONDENT

Date of Decision : 04-09-1986

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 263, 263(1)

Citation : (1987) 59 CTR 1 : (1987) 164 ITR 658

Hon'ble Judges : Uday Sinha, J; Ashwini Kumar Sinha, J

Bench : Division Bench

Advocate : B.P. Rajgarhia and S.K. Sharan, for the Appellant; L.N. Rastogi, for the Respondent

Judgement

1. These are three references in terms of Section 256(1) of the Income Tax Act, 1961 (hereinafter called "the Act"). The questions referred to us for our opinion are the following :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal has rightly held that the Commissioner of Income Tax, acting u/s 263(1) of the Income Tax Act, 1961, could not interfere with an order of assessment made u/s 143(1) in pursuance of the "Scheme to help the new taxpayers in small income group" launched by the Government ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal has rightly cancelled the order passed by the Commissioner of Income Tax u/s 263(1) of the Income Tax Act, 1961, for each of the assessment years 1970-71, 1971-72 and 1973-74?"

2. Earlier, we had heard Taxation Cases Nos. 93 to 98 of 1978 (Commissioner of Income Tax Vs. Pushpa Devi,) which we disposed of by our judgment dated June 13, 1986. The questions referred to us for our consideration in the present references fell for consideration in the earlier cases as well. In the aforesaid earlier cases, questions Nos. 1 and 4 were as follows:

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal has rightly held that the assessment orders, having been passed by the Income Tax Officer after necessary enquiries in pursuance of the " Scheme to help the new taxpayers in the small income groups " launched by the Government, were not erroneous as to enable the Commissioner of Income Tax to assume jurisdiction u/s 263(1) of the Income Tax Act, 1961?.....

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

3. Question No. 1 was identical in both the cases. Question No. 1 in both the cases, referred to the power of the Commissioner to act u/s 263(1) of the Act. In that case, we held that the Commissioner was not divested of the power to act in terms of Section 263(1) of the Act. The scheme did not cover cases of ladies and minors and, therefore, the Commissioner had full jurisdiction to act in terms of Section 263(1) of the Act. In paragraph 26 of the judgment, we held that the Tribunal was not right in holding that the order of the Income Tax Officer was not erroneous which could enable the Commissioner to assume jurisdiction u/s 263(1) of the Act. The first question was, therefore, answered in the negative. That meant that the Tribunal was not right in holding that the Commissioner of Income Tax could not interfere with the order of assessment made u/s 143(1) of the Act in pursuance of the "Scheme to help new taxpayers in small income groups". It may be stated here that the present case arose as a sequel to the same scheme as fell for consideration in the case of Commissioner of Income Tax Vs. Pushpa Devi, . In our view, therefore, following our earlier decision, the first question referred to us in these cases must be answered in the negative, in favour of the Revenue and against the assessee.

4. The first question having been answered in favour of the Revenue, it necessarily follows that the Tribunal was not right in cancelling the order passed by the Commissioner of Income Tax u/s 263(1) of the Act for the assessment years 1970-71, 1971-72 and 1972-73.

5. Mr. Rastogi, learned counsel for the assessee, contended that even if the decision of this court in regard to question No. 1 is unassailable, yet question No. 2 must be answered in favour of the assessee. It was contended that in order to exercise jurisdiction in terms of Section 263(1) of the Act, it is not enough to hold that the order was erroneous, but the Commissioner must also find that it was prejudicial to the Revenue. He contended that nothing had been brought on record to show that the order was prejudicial to the Revenue. Reliance was placed on a Division Bench decision of this court in Commissioner of Income Tax Vs. Shantilal Agarwalla, . This case had been cited before us in the case of Commissioner of Income Tax Vs. Pushpa Devi, as well. We did not refer to it

specifically for the reason that the case was distinguishable on facts. That was a case where an order had been passed in terms of Section 263(1) of the Act because the order of assessment had been passed by the Income Tax Officer, D-Ward, when it should have been passed by the Income Tax Officer, B-Ward. In that situation, the Bench observed that it was obligatory upon the Revenue to show that by virtue of a different Income Tax Officer having passed orders, there had been underassessment. The present is a case where the necessary facts had not been gone into. A crucial question was whether the source of initial capital had been explained by the assessee or not. On the facts of the present case, prejudice is writ large. In the case of a first assessee, the assessee had to show the source of the initial capital investment. No enquiry had been held in that regard and the ipse dixit of the assessee had been accepted. If a proper enquiry had been held, it could show that the capital had been advanced by the husband of the lady. In that situation, the conclusion would be obvious that the declaration by the lady had been made really in regard to the income of the husband. That is the special situation in this case. In the case of Commissioner of Income Tax Vs. Shantilal Agarwalla, , N.P. Singh J. observed that the Additional Commissioner had not pointed out as to how the order of assessment was prejudicial to the case of the Revenue. In that case, this was a relevant question, but, on the facts of this case the prejudice is writ large on the face of it. We are in complete agreement with the view propounded by N.P. Singh J.

6. The present case, however, is on the lines of the Supreme Court cases in Rampyari Devi Saraogi v. CIT [1963] 67 ITR 84 and Smt. Tara Devi Aggarwal Vs. Commissioner of Income Tax, West Bengal, Calcutta, . The case relied upon by Mr. Rastogi is distinguishable on facts. In that view of the matter, we are clearly of the view that the Tribunal was not right in cancelling the order passed by the Commissioner of Income Tax u/s 263(1) of the Act. The order of the Income Tax Officer was erroneous and prejudicial for not having taken note of the provisions of Section 143(1) of the Act. It was prejudicial to the Revenue, as the necessary enquiry had not been made by the Income Tax Officer. In that view of the matter, the second question also has to be answered in favour of the Revenue and against the assessee. In the case of Commissioner of Income Tax Vs. Pushpa Devi, , we clearly held that the decision of the Tribunal in the case of Rambha Devi, i. e., the present case, was not correct. We reiterate that view once again.

7. For the reasons stated above, the references are thus disposed of. Both the questions are answered in favour of the Revenue and against the assessee. In the special facts and circumstances of the case, there will be no order as to costs.

8. Let a copy of this judgment be transmitted to the Income Tax Appellate Tribunal in terms of Section 260 of the Income Tax Act, 1961.