**(1991) 08 PAT CK 0025**

**In the Patna High Court**

**Case No :** Taxation Case Nos. 336 to 338 of 1980

Commissioner of Income Tax APPELLANT

Vs

Smt. Sharda Devi Lath RESPONDENT

**Date of Decision :** 20-08-1991

**Acts Referred:**

**Citation :** (1991) 08 PAT CK 0025

## Judgement

G.C. Bharuka, J.—The present tax cases arise out of a reference made by the Tribunal u/s 256(1) of the Income Tax Act, 1961 (hereinafter to be referred to as "the Act" only), for seeking the opinion of this court on the following question of law :

" Whether, on the facts and in the circumstances of the case, the Tribunal has rightly upheld the order dated April 11, 1978, of the Appellate Assistant Commissioner setting aside the assessments made by the Income Tax Officer u/s 144 read with Section 263 of the Income Tax Act, 1961, for the assessment years 1970-71, 1971-72 and 1972-73 ?"

2. These three tax cases relate to the assessment years 1970-71, 1971-72 and 1972-73 and involve a common question of law on identical facts.

3. In October, 1972, the Central Board of Direct Taxes, exercising its power u/s 119 of the Act, had formulated and launched a scheme to help the new taxpayers in small income groups. The assurance given under this scheme was that if the assessees belonging to small income groups having an income not exceeding Rs. 15,000, file their returns of income voluntarily, then the same will be accepted u/s 143(1) of the Act. The scheme had further provided that, in the case of returns being filed by or in the names of ladies and minors, the same should be subjected to scrutiny before the benefits of the scheme are extended to them.

4. In the present cases, the assessee who is a lady has filed her returns under the aforesaid scheme which was accepted by the Income Tax Officer after some

 

enquiry. But the Commissioner of Income Tax not being satisfied with regard to the enquiry and acceptance of the returns by the Income Tax Officer, pursuant to his revisional power u/s 263(1) of the Act, suo motu set aside the order of assessment and directed the Income Tax Officer to make fresh assessment after making a close scrutiny as to the extent of initial capital invested by the lady and the actual income earned by the assessee. This order of the Commissioner of Income Tax was set aside by the Tribunal pursuant to an appeal filed by the assessee. At the instance of the Commissioner of Income Tax, a reference was made to this court u/s 256(1) of the Act ; but, in the meantime, the Income Tax Officer, pursuant to the direction of the Commissioner of Income Tax, after taking recourse to issuance of notice under the Act, passed fresh orders of assessment u/s 144 of the Act. The assessee preferred an appeal before the Appellate Assistant Commissioner who set aside the order of the Income Tax Officer on the ground that the order of the Commissioner of Income Tax had already been set aside by the Tribunal. The Income Tax Officer''s appeal to the Tribunal also failed only for this reason.

5. The order of the Tribunal by which the order of the Commissioner of Income Tax passed u/s 263(1) of the Act was set aside has been held to be bad by this court in a reference u/s 256(1) of the Act. This case has been reported in Commissioner of Income Tax Vs. Smt. Sharda Devi Lath, .

6. Since the said first order of the Tribunal has been held to be bad and since only because of that order, the Appellate Assistant Commissioner had set aside the order of the Income Tax Officer and the appellate order was affirmed, the question referred to this court in the present cases has to be answered in the negative, i.e., in favour of the Revenue and against the assessee. However, it will be open to the assessee to assail the order of the Income Tax Officer on such other grounds which may be available to her, which the Tribunal may decide itself or remit it to the lower appellate authority for its consideration on merits. The question referred to this court is answered accordingly. In the facts and circumstances of this case, there shall be no order as to costs.

7. Let a copy of this judgment be transmitted to the Assistant Registrar of Income Tax Appellate Tribunal, ''A'' Bench, Patna, in terms of Section 260 of the Act.

B.C. Basak, C.J.

8. I agree.

 