(2002) 07 GUJ CK 0008

In the Gujarat High Court

Case No : Income Tax Reference No. 80 of 1989

Commissioner of Income Tax APPELLANT

Vs

Sumankumar I. Parekh RESPONDENT

Date of Decision : 03-07-2002

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

Citation : (2002) 07 GUJ CK 0008

Hon'ble Judges : M.S. Shah, J;K.A. Puj, J

Bench : Division Bench

Advocate : Tanvish Bhatt, for the Appellant;

Judgement

M.S. Shah, J.—In this reference at the instance of the revenue, the following question is referred for our opinion in respect of the assessment year 1983-84 :-

"Whether the Tribunal is right in law in setting aside the Order made by the CIT u/s. 263 of the I.T. Act, 1961 ?"

2. We have heard Mr. Tanvish Bhatt, learned standing counsel for the revenue. Though served, none appears for the respondent-assessee.

3. The assessee is an individual. For assessment year 1983-84, the assessee filed his return of income on 26.9.1983 at total income of Rs. 26,020/-. The Income Tax Officer accepted the return u/s 143(1) of the Act. On scrutiny of the record of the assessment as made by the Income Tax Officer on the assessee for the year under consideration, the Commissioner of Income Tax, Rajkot noticed that the assessee''s wife Smt. Arunaben Sumankumar had filed her return of net wealth for the first time for assessment year 1983-84 on 29.9.1983 showing gold ornaments weighing 656 gms. valued at Rs. 91,988/-. She had explained the acquisition of the gold ornaments as having been received by her in 1974 at the time of her marriage. The Commissioner of Income Tax further noted that Shri Ishwarlal C. Parikh, the father of the assessee had not shown any expenses on marriage of the assessee. Assessee''s wife Smt. Arunaben, had no other source

of income except interest income. The Commissioner of Income Tax, therefore, found that the ornaments were required to be treated as acquired by the assessee out of his income from undisclosed sources. He, therefore, held that the Order of the Income Tax Officer was erroneous and prejudicial to the interest of revenue in as much as the same had been made without making proper enquiries regarding acquisition of gold ornaments by the assessee''s wife. He, therefore, invoked his jurisdiction u/s 263 of the Act and after hearing the assessee set aside the assessment as made by the Income Tax Officer and directed him to read the same afresh according to the provisions of law.

4. In second appeal, the Tribunal held that the Commissioner of Income Tax could not have taken action u/s 263 of the Act in the case of the assessee on the basis of the records in the cases of other persons, no matter how closely they were related to the assessee. Holding thus, the Tribunal set aside the Order of the Commissioner. Hence, this reference at the instance of the revenue.

5. At the hearing of this reference today, Mr Tanvish Bhatt, learned standing counsel for the revenue has invited our attention to the decision of the Supreme Court in Commissioner of Income Tax, Bangalore Vs. Shree Manjunatheaware Packing Products and Camphor Works, wherein the Apex Court has examined the legislative amendment to Section 263 including the amendment made with retrospective effect for amplifying the scope of the term "record". In the said decision, the Supreme Court did not accept the narrow interpretation of the word "record" which had appealed to the Calcutta High Court in the case of Ganga Properties Vs. Income Tax Officer, ; and the Apex Court held as under :-

"The revisional power conferred on the Commissioner u/s 263 is of wide amplitude. It enables the Commissioner to call for and examine the record of any proceeding under the Act. It empowers the Commissioner to make or cause to be made such enquiry as he deems necessary in Order to find out if any Order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. After examining the record and after making or causing to be made an enquiry if he considers the Order to be erroneous then he can pass the Order thereon as the circumstances of the case justify. Obviously, as a result of the enquiry he may come into possession of new material and he would be entitled to take that new material into account. If the material, which was not available to the Income Tax Officer when he made the assessment could thus be taken into consideration by the Commissioner after holding an enquiry, there is no reason why the material which had already come on record though subsequently to the making of the assessment cannot be taken into consideration by him. Moreover, in view of the clear words used in clause (b) of the Explanation to Section 263(1), it has to be held that while calling for and examining the record of any proceeding u/s 263(1) it is and it was open to the Commissioner not only to consider the record of that proceeding but also the record relating to that proceeding available to him at the time of examination."

6. Following the aforesaid decision, we are of the view that thee is nothing in the

provisions of the Income Tax Act, 1961 particularly Section 263 of the Act or in the aforesaid pronouncement of the Apex Court which would require us to accept the narrow view which appealed to the Tribunal that the record must be of the assessee concerned and that the Commissioner had no power, jurisdiction and authority to take action u/s 263 of the Act in case of the assessee on the basis of the records in the cases of other persons.

Our answer to the question is accordingly in the negative i.e. in favour of the revenue and against the assessee.

7. The reference accordingly stands disposed of with no Order as to costs.