
(1982) 07 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 199 of 1980

Commissioner of Income Tax

APPELLANT

Vs

Tej Kumar Sethi (HUF)

RESPONDENT

Date of Decision : 13-07-1982

Acts Referred:

Income Tax Act, 1961 — Section 154, 154(3), 155, 155(1)

Citation : (1983) 143 ITR 757

Hon'ble Judges : K.N. Shukla, J;G.G.Sohani, J

Bench : Division Bench

Advocate : R.C. Mukati, for the Appellant; None, for the Respondent

Judgement

Sohani, J.—By this reference u/s 256(1) of the I.T. Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in cancelling the Income Tax Officer's order u/s 155(1) for the assessment year 1968-69 by holding that the said order passed by the ITO was invalid ? "

2. The material facts giving rise to this reference briefly are as fallows:

The assessee is an individual and was at the material time deriving income from two registered firms, M/s. Moolchand Nemichand and M/s. Vinodiram Balchand. The assessment year in question is 1968-69. For that year, the assessment was completed by the ITO, Ujjain, by provisionally holding the share income of the assessee from the said two firms at Rs. 1,332 and Rs. 17,057. Subsequently, on receiving communication from the ITO, Indore, the ITO, Ujjain, revised the assessment u/s 154/155 of the Act and the revised share income of the assessee from the aforesaid two firms was taken at Rs. 3,556 and Rs. 35,105. Aggrieved by the order passed by the ITO u/s 154/155 of the Act, the assessee filed an appeal before the AAC and contended that no opportunity of hearing was given

to the assessee by the ITO before effecting the rectification. The AAC held that there was no provision for allowing any opportunity to the assessee of any hearing before making an order u/s 155 of the Act. In this view of the matter, the AAC dismissed the appeal. Aggrieved by that order, the assessee preferred an appeal before the Tribunal. The Tribunal held that it was mandatory on the part of the ITO to have given an opportunity of hearing to the assessee before passing the order in question. The Tribunal, therefore, held that the order passed by the ITO was vitiated. Aggrieved by the order passed by the Tribunal, the Department sought a reference and it is at the instance of the Department that the aforesaid question of law has been referred to this court for its opinion.

3. Shri Mukati, the learned counsel for the Department, contended that no hearing was contemplated by the provisions of Section 155(1) of the Act. The contention cannot be upheld. Section 155(1) of the Act, which provides for amending the order of assessment of a partner with a view to inclusion of the share of the partner in the income of the firm, in the assessment of the partner, lays down that the provisions of Section 154 shall, so far as may be, apply to these proceedings. Sub-section (3) of Section 154 provides that the amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee a reasonable opportunity of being heard. In the instant case, no such notice was given. The Tribunal was, therefore, right in holding that the order passed by the ITO u/s 155(1) of the Act was vitiated.

4. For all these reasons, our answer to the question referred to this court is in the affirmative and against the Department. As none appeared on behalf of the assessee, parties shall bear their own costs of this reference.