

(1996) 04 MP CK 0036

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No"s. 216 to 219 of 1993

Commissioner of Income Tax

APPELLANT

Vs

Thakurdas Aidasani

RESPONDENT

Date of Decision : 02-04-1996

Acts Referred:

Income Tax Act, 1961 — Section 148, 256(2)

Citation : (1997) 226 ITR 869

Hon'ble Judges : Nirmal Kumar Jain, J;Asha Ram Tiwari, J

Bench : Division Bench

Advocate : D.D. Vyas, for the Appellant; Nazir Singh, for the Respondent

Judgement

N.K. Jain, J.—The Commissioner of Income Tax, Bhopal, has filed these applications u/s 256(2) of the Income Tax Act, 1961 (for short, "the Act"), seeking a direction to the Income Tax Appellate Tribunal, Indore, to state the case and refer the undernoted questions said to be of law to this court arising out of its common order dated February 28, 1992, passed in I. T. A. Nos. 624 to 627/Ind. of 1990, and the order of refusal to refer the case passed on November 30, 1992, in R. A. Nos. 118 to 121/Ind. of 1992, assessment years 1978-79 to 1981-82 :

" 1. Whether, on the facts and in the circumstances of the case, the decision of the Income Tax Appellate Tribunal holding the issue of notices u/s 148 to be illegal is justifiable in view of the fact that there was sufficient material with the Assessing Officer for reason to believe ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in directing to accept the return filed under the Amnesty Scheme when the provisions of the same were not at all applicable to the assessee's case ?"

2. The assessment years involved are 1978-79 to 1981-82 for which the non-applicant/assessee had been assessed earlier. However, a search of the business

and residential premises of the assessee was conducted by the Department on 21st and 22nd January, 1986. During the course of the search, a diary was seized which contained certain entries showing substantial investment in the business of scooters, mopeds, 3 wheelers, shares, lands and money-lending in the name of the assessee as well as other family members and relatives. The Assessing Officer, after obtaining approval of the Commissioner of Income Tax, issued notices u/s 148 of the Act for the aforesaid four assessment years. The notices for the assessment years 1978-79 to 1980-81 were served upon the assessee on July 28, 1986. He had, however, filed the returns for those three assessment years on March 31, 1986, i.e., even before the service of the notices u/s 148. The notice u/s 148 for the year 1981-82 was issued on February 24, 1986 (for which no approval of the Commissioner of Income Tax was required). The assessee filed the return of income for that year also on March 31, 1986. All these returns were claimed to have been filed under the Amnesty Scheme.

3. The assessee challenged the issuance of notice u/s 148 by filing appeals before the Deputy Commissioner of Income Tax (Appeals), who, however, confirmed the action of the Assessing Officer by a consolidated order dated March 28, 1990, dismissing the appeals of the assessee. The assessee as well as the Department then went in appeal to the Tribunal. The Tribunal by its common order dated February 28, 1992, dismissed the Department's appeals but allowed the appeals of the assessee and quashed the notices issued u/s 148. It was further held that the returns filed by the assessee on March 31, 1986, were under the Amnesty Scheme.

4. Since the order of the Tribunal was not acceptable to the applicant/ Department, it moved the Tribunal u/s 256(1) seeking a reference to this court. This prayer of the Department was also declined by the Tribunal, vide its order dated November 30, 1992, thus giving rise to the present applications.

5. We have heard Shri D.D. Vyas, learned counsel for the applicant/ Department, and Shri Nazir Singh, learned counsel for the non-applicant/ assessee. Learned counsel for the non-applicant/assessee resisted these applications on the ground that the decision of the Tribunal is based on appreciation of facts and as such no referable questions of law arise therefrom.

6. As against it, it was contended by Shri Vyas, learned counsel for the applicant-Department, that the decision of the Income Tax Appellate Tribunal is not based on appreciation of relevant facts, as the assessee himself had furnished returns of income on March 31, 1986, for the relevant assessment years wherein he had declared higher income. All these returns, he further contended, were however, barred by limitation u/s 139. According to learned counsel, the assessee could not have taken in law resort to the Amnesty Scheme after the search.

7. Since we propose to direct the Tribunal to make a reference, we refrain from making any observation as to the submissions made by learned counsel for the parties. We are, however, satisfied that the decision of the Tribunal does give rise

to the following questions of law necessitating answer by this court. We have, however, in consultation with learned counsel for the parties reshaped the questions as follows :

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the notice issued u/s 148 of the Act was illegal ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the returns filed by the assessee were under the Amnesty Scheme ?"

8. Accordingly, the applications u/s 256(2) are allowed and the Tribunal is directed to state the case and refer the questions as noted in the preceding paragraph for the opinion of this court. However, no order is made as to costs. Counsel's fee is allowed at Rs. 750 for each side, in each case, if certified.

9. This order be retained in Miscellaneous Civil Case No. 216 of 1993 and copies be filed in Miscellaneous Civil Cases Nos. 217 of 1993, 218 of 1993 and 219 of 1993. A copy in each case be transmitted to the Tribunal also.