

(1980) 07 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 405 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Thakurlal

RESPONDENT

Date of Decision : 21-07-1980

Acts Referred:

Income Tax Act, 1961 — Section 147, 148(2)

Citation : (1980) 07 MP CK 0021

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

Bench : Division Bench

Advocate : S.C. Bagadiya, for the Appellant; G.M. Chaphekar, for the Respondent

Judgement

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

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding the proceedings started u/s 147(b) as invalid and the assessment framed as illegal in view of the infirmity that the ITO failed to record reasons for reopening the assessment and justified in quashing the assessment ?

2. Whether the Tribunal was justified in law in holding that the loss of Rs. 45,000 was a speculative loss within the meaning of Section 43(5) of the Income Tax Act, 1961, which could not be deducted from the assessee's business income computed for the assessment year 1961-62 ?"

2. The material facts giving rise to this reference briefly are as follows : The assessee is a registered firm carrying on the business of extracting managanese ore and selling it. The assessment year in question is 1961-62. The assessment was originally framed by the ITO on 16th January, 1963. Subsequently, the ITO issued a notice u/s 148 of the Act on 31st January, 1966, in exercise of the powers conferred on him by Clause (b) of Section 147 of the Act. The assessee filed a return under protest. The ITO, overruling the objections of the assessee

about the validity of reassessment proceedings, completed reassessment on 12th January, 1967, after including a sum of Rs. 45,000 which was paid by the assessee as compensation to M/s. Natwarlal Shamaldas & Co., Bombay, for a breach of contract. The assessee preferred an appeal before the AAC, which was dismissed. On further appeal before the Tribunal, the Tribunal found that the ITO having failed to record reasons for issuing the notice of reassessment, as required by Section 148(2) of the Act, had no jurisdiction to proceed with the reassessment. The Tribunal, therefore, quashed the reassessment. On merits, the Tribunal found that the loss of Rs. 45,000 claimed by the assessee was a speculative loss, which could not be deducted from the assessee's business income. Aggrieved by the order of the Tribunal, the department sought a reference. The assessee also submitted an application for making a reference. The Tribunal has referred to this court for its opinion, the first question at the instance of the department and the second question at the instance of the assessee.

3. Now, as regards the first question, it would be useful to refer to the provisions of Section 148 of the Act, which are as follows :

"148. Issue of notice where income has escaped assessment.--(1) Before making the assessment, reassessment or recomputation u/s 147, the Income Tax Officer shall serve on the assessee a notice containing all or any of the requirements which may be included in a notice under subsection (2) of Section 139 ; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that Sub-section .

(2) The Income Tax Officer shall, before issuing any notice under this section, record his reasons for doing so."

4. In view of Sub-section (2) of Section 148 of the Act, it is clear that recording of reasons by the ITO before issuing a notice u/s 147(b) is a mandatory requirement under the Act. In the instant case, all that was recorded by the ITO before issuing the notice was as follows :

"Payment of Rs. 45,000 to M/s. Natwarlal Shamaldas & Company is not allowable expenditure."

5. In these circumstances, the Tribunal rightly held that the failure to record reasons as contemplated by Section 148(2) of the Act vitiated the reassessment. Learned counsel for the department was unable to point out that the view taken by the Tribunal was not justified in the circumstances of the case. Our answer to the first question referred to this court is in the affirmative and against the department.

6. As regards the second question referred to this court, learned counsel for the parties conceded that if our answer to the first question was in the affirmative and against the department, it was not necessary to answer the second question.

7. For all these reasons, our answer to the first question referred to us is in the

affirmative and against the department. As regards question No. 2, we decline to answer that question in the circumstances of the case. Parties shall bear their own costs of this reference.