
(1982) 06 MP CK 0009

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 118 of 1980

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

USHA DEVI.

RESPONDENT

Date of Decision : 28-06-1982

Acts Referred:

Income Tax Act, 1961 — Section 154

Citation : (1983) 35 CTR 52

Hon'ble Judges : Sohani, J

Bench : Division Bench

Judgement

Sohani, J. - This is an application u/s 256(2) of the IT Act, 1961 (hereinafter referred to as the Act).

2. The material facts giving rise to this application briefly are as follows :

The assessee is an individual and the assessment year in question is 1971-72. In the return filed by the assessee, capital gains of Rs. 41,995 on account of sale of shares of Empire Dyeing & Manufacturing Company Ltd., Bombay was shown on the basis that the cost price of the share was Rs. 42.57 p. The ITO accepted that cost price as shown in the return and computed capital gains accordingly. Subsequently, the ITO found that the AAC had held the cost price of the share in question at Rs. 24.45 p. Per share in the asst. yr. 1970-71. The ITO, therefore, acting u/s 154 of the Act, rectified the mistake and computed the capital gains on the basis of the cost price of Rs. 24.45 p. per share. Aggrieved by that order, the assessee preferred an appeal. The AAC held that the ITO had no jurisdiction to rectify the mistake u/s 154 and the order passed by the ITO was bad in law. Aggrieved by that order, the department preferred an appeal before the Tribunal, which dismissed the appeal. The application submitted by the department u/s 256(1) of the Act was also rejected by the Tribunal. Hence, the department has preferred this application.

3. Having heard Id. counsel for the parties we have come to the conclusion that

following question of law does arise in this case :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the ITO had no jurisdiction u/s 154 of the IT Act, 1961, to rectify the order of assessment in respect of the asst. yr. 1971-72 ?"

4. The application is, therefore, allowed. The Tribunal is directed to state the case and refer the aforesaid question of law to this court for its opinion. In the circumstances of the case, parties shall bear their own costs of this application.

Application allowed.