(2006) 01 GUJ CK 0051

In the Gujarat High Court

Case No : Income-tax Reference No. 91 of 1995

Commissioner of Income Tax — APPELLANT

Vs

Vikrant Crimpers — RESPONDENT

Date of Decision : 09-01-2006

Acts Referred:
Income Tax Act, 1961 — Section 143(1), 256(1), 263

Citation : (2006) 202 CTR 393 : (2006) 282 ITR 503

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Tanvish U. Bhatt, for the Appellant;

Judgement

H.N. Devani, J.—The Income Tax Appellate Tribunal, Ahmedabad Bench "B", has referred the following question u/s 256(1) of the Income Tax Act, 1961 ("the Act"), at the instance of the Commissioner of income tax:

Whether, in the facts and circumstances of the case, the Tribunal was right in holding that the Commissioner of Income Tax, Surat, was not justified to pass the order u/s 263 of the Income Tax Act, 1961, in the case of the assessee relating to the assessment year 1986-87?

2. The assessment year is 1986-87.

3. Heard Mr. T.U. Bhatt, learned standing Counsel for the applicant-Revenue. Though served, there is no appearance on behalf of the respondent-assessee.

4. The facts stated briefly are that the Assessing Officer had made assessment u/s 143(1) of the Act on March 8, 1988. The Commissioner of Income Tax, being of the view that the said order was erroneous and prejudicial to the interests of the Revenue, initiated proceedings u/s 263 of the Act. Vide order dated March 26, 1990, the Commissioner of Income Tax held that the assessment order was erroneous and prejudicial to the interests of the Revenue, and, inter alia, directed the Assessing Officer to add the amount of sales tax benefit of Rs.

2,32,961 to the total income.

5. The assessee carried the matter in appeal before the Tribunal. The Tribunal vide its order dated June 8, 1992, held that the order of the Commissioner of Income Tax u/s 263 of the Act was without jurisdiction, and allowed the appeal.

6. As can be seen from the order of the Tribunal, the Tribunal has found, as a matter of fact, that the assessment order was framed u/s 143(1) of the Act. That the Central Board of Direct Taxes had vide its Circular No. RA/86-87/DIT dated August 26, 1987, directed that no remedial action is necessary in summary cases. The Tribunal held that, admittedly, the assessee''s case for the assessment year 1986-87 was in the nature of summary assessment, and that, therefore, in view of the directions of the Central Board of Direct Taxes, the Commissioner of Income Tax could not have exercised revisional powers u/s 263 of the Act. Nothing has been pointed out to dislodge the aforesaid findings of the Tribunal.

7. The Commissioner of Income Tax, being bound by the directions of the Central Board of Direct Taxes, could not have exercised powers u/s 263 of the Act in the present case when the assessment in question was in the nature of a summary assessment.

8. The Tribunal was justified in holding that the Commissioner of Income Tax, Surat, was not justified in passing the order u/s 263 of the Act in the case of the assessee in relation to the assessment year 1986-87. Considering the fact that the court has taken the view that the exercise of powers u/s 263 of the Act was without jurisdiction, it is not necessary to enter into the merits of the controversy. The question is accordingly answered in the affirmative, i.e., in favour of the assessee and against the Revenue.

9. The reference stands disposed of accordingly. There shall be no order as to costs.