
(1988) 08 MP CK 0034

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 38 of 1986

Commissioner of Income Tax

APPELLANT

Vs

Vithal Textiles

RESPONDENT

Date of Decision : 10-08-1988

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 144B, 263, 263(1)

Citation : (1988) 73 CTR 49 : (1989) 175 ITR 629 : (1988) 40 TAXMAN 401

Hon'ble Judges : G.G. Sohani, Acting C.J.; R.K. Verma, J

Bench : Division Bench

Advocate : R.C. Mukati, for the Appellant; G.M. Chaphekar and Samvatsar, for the Respondent

Judgement

G.G. Sohani, Actg. C.J.

1. By this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the income tax Appellate Tribunal, Indore Bench, Indore, 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 holding that the Commissioner of Income Tax had no jurisdiction to revise u/s 263 of the Income Tax Act, 1961, an assessment order passed by the Income Tax Officer in accordance with the directions issued to him by the Inspecting Assistant Commissioner of Income Tax u/s 144B of the Income Tax Act, 1961 ?"

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

While framing the assessment of the assessee for the assessment year 1978-79 for which the assessee had filed a return declaring an income of Rs. 53,226, the Income Tax Officer proposed to make additions exceeding Rs. 1,00,000 to the income declared by the assessee. One of the items of addition proposed by the Income Tax Officer related to an amount of Rs. 1,50,000 pertaining to high denomination notes declared by the assessee. The Income tax Officer made a

reference u/s 144B of the Act to the Inspecting Assistant Commissioner of Income Tax. The direction issued by the Inspecting Assistant Commissioner u/s 144B of the Act was that the addition of Rs. 1,50,000 proposed by the Income Tax Officer was not justified. In compliance with the direction issued by the Inspecting Assistant Commissioner, the Income Tax Officer passed the order of assessment. The Commissioner of Income Tax, exercising powers u/s 263 of the Act, held that the order passed by the Income Tax Officer was prejudicial to the interests of the Revenue, inasmuch as proper enquiries had not been made by the assessing authority with regard to the genuineness of the amount of Rs. 1,50,000. The Commissioner of Income Tax, therefore, set aside the order of assessment and directed the Income Tax Officer to make a fresh assessment after enquiring into the genuineness of the assessee's claim with regard to possession of high denomination notes worth Rs. 1,50,000. Aggrieved by the order passed by the Commissioner, the assessee preferred an appeal before the Tribunal. The Tribunal held that an assessment order which was passed by the Income Tax Officer in accordance with the directions issued by the Inspecting Assistant Commissioner u/s 144B of the Act was not amenable to the jurisdiction of the Commissioner u/s 263 of the Act. In this view of the matter, the Tribunal set aside the order passed by the Commissioner. Aggrieved by the order passed by the Tribunal, the Revenue sought reference and it is at the instance of the Revenue that the aforesaid question of law has been referred to this court for its opinion.

3. Shri Mukati, learned counsel for the Revenue, contended that an order passed by the Income Tax Officer in compliance with the directions of the Inspecting Assistant Commissioner continued to be an order passed by the income tax Officer and, as such, the Commissioner had power to revise that order u/s 263 of the Act, provided the Commissioner was satisfied that the order was erroneous and was prejudicial to the interests of the Revenue. It was, therefore, contended that the Tribunal erred in holding that the order passed by the Income Tax Officer in the instant case was not amenable to the jurisdiction of the Commissioner u/s 263 of the Act. In reply, Shri Chaphekar, learned counsel for the assessee, contended that the order passed by the Income Tax Officer deleting the addition of Rs. 1,50,000 proposed by him was made in pursuance of the direction issued to the Income Tax Officer by the Inspecting Assistant Commissioner and, hence, the order passed by the Income Tax Officer in that behalf was virtually an order passed by the Inspecting Assistant Commissioner which could not be revised by the Commissioner u/s 263 of the Act. Learned counsel for the assessee referred to the provisions of Section 264 of the Act and pointed out that an order passed by the Inspecting Assistant Commissioner or by any authority other than the Income Tax Officer, could be revised u/s 264 of the Act, in favour of the assessee and that the Commissioner, therefore, could not revise the order of assessment in the instant case adversely affecting the assessee. It was, therefore, contended that the Tribunal was right in holding that the order passed by the Income Tax Officer which was virtually an order passed by the Inspecting Assistant

Commissioner was not amenable to the jurisdiction of the Commissioner u/s 263 of the Act.

4. To appreciate the contentions urged on behalf of the parties, it would be useful to refer to the relevant provisions of Section 263(1) of the Act which read as follows :

"263. Revision of orders prejudicial to Revenue.--(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Income Tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment."

5. From a perusal of the aforesaid provision, it is clear that the Commissioner has jurisdiction u/s 263 of the Act to revise an order if it is passed by the Income Tax Officer and if the Commissioner considers the order to be erroneous and prejudicial to the interests of the Revenue. The assessment order passed by the Income Tax Officer after giving effect to the directions given by the Inspecting Assistant Commissioner u/s 144B is still an order passed by the Income Tax Officer u/s 143(3) of the Act. Moreover, the Explanation, Clause (a), to Section 263(1) inserted by the Taxation Laws (Amendment) Act, 1984, with effect from October 1, 1984, makes the position very clear. That Explanation is as under :

"Explanation.-- For the removal of doubts, it is hereby declared that, for the purposes of this sub-section, an order passed by the Income Tax Officer shall include -

(a) an order of assessment made on the basis of directions issued by the Inspecting Assistant Commissioner u/s 144A or Section 144B ; and..."

6. The aforesaid Explanation makes it clear that it was enacted to remove doubts. Though the Explanation came into force from October 1, 1984, the amending Act, being declaratory, must be held to be retrospective. The Supreme Court in *Central Bank of India v. Their Workmen* [1959] 29 Comp Cas 367 ; [1959] 17 FJR 57 has approved the following observations in *Craies on Statute Law*, fifth edition, at pp. 56-57 :

"For modern purposes, a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word "declared" as well as, the word "enacted"."

7. In *Shri Chaman Singh and Another Vs. Srimathi Jaikaur*, , the Supreme Court

has observed that it is well settled that if a statute is curative or merely declares the previous law, retroactive operation would be more rightly ascribed to it. Learned counsel for the assessee referred to the decision in *Harding v. Commissioners of Stamps for Queensland* [1898] AC 769 (PC) and contended that a declaratory Act is not necessarily retrospective. The decision in [1898] AC 769 (PC) is, however, distinguishable on facts. In that case, it was held that there was nothing in the amending Act to show that it purported to construe the earlier Act. In the instant case, the Explanation inserted by the amending Act declares for the removal of doubts, that for the purpose of Sub-section (1) of Section 263, an order passed by the Income Tax Officer shall include an order of assessment made on the basis of directions issued by the Inspecting Assistant Commissioner u/s 144B of the Act. The Explanation seeks to clarify the previous law with a view to remove further controversy and litigation on the point. In our opinion, therefore, the Tribunal was not right in holding that the Commissioner had no jurisdiction u/s 263 of the Act to revise an order of assessment passed by the Income Tax Officer in accordance with the directions issued to him by the Inspecting Assistant Commissioner u/s 144B of the Act.

8. For all these reasons, our answer to the question referred to this court is in the negative and in favour of the Revenue. In the circumstances of the case, parties shall bear their own costs of this reference.