

(1983) 02 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Case No. 134 of 1882

Commissioner of Income Tax (Central)	APPELLANT
Vs	
Shiv Parshad	RESPONDENT

Date of Decision : 17-02-1983

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 256(2), 64(1)

Citation : (1983) 35 CTR 165 : (1984) 146 ITR 397

Hon'ble Judges : S.S. Kang, J;Gokal Chand Mittal, J

Bench : Division Bench

Advocate : Ashok Bhan and A.K. Mittal, for the Appellant; S.S. Mahajan, for the Respondent

Judgement

1. If a question of law has been settled by this court after dissenting with the view taken by another High Court and if thereafter similar cases come up before the Income Tax Tribunals within the jurisdiction of this court or before this court, can it be said that question of law arises within the meaning of Section 256(1) or 256(2) of the I.T. Act, 1961 (hereinafter referred to as "the Act").

2. The Income Tax Appellate Tribunal, Chandigarh, followed a Division Bench judgment of this court in CIT v. Anand Samp [1980] 121 ITR 873 to conclude that if the karta of an HUF is a partner in a firm and his minor daughter is also admitted to the benefits of partnership in that firm, the income of the minor daughter cannot be clubbed with the income of the karta of the HUF and the income in the hands of the karta of the HUF cannot be treated as income of an individual u/s 64(1) of the Act. Against the aforesaid order of the Tribunal, an application u/s 256(1) of the Act was filed before the Tribunal for referring the following question of law for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the income of the minor daughter, Miss Aarti, from the firm, M/s. Bharat Iron & Steel Rolling Mills, was not includible in the individual assessment of the assessee u/s 64(1)(iii) of the I.T. Act, 1961 ?"

3. The Tribunal rejected the application for reference with the following observations :

" We find that the Tribunal in fact confirmed the order of the Commissioner of Income Tax (Appeals) on the issue before it because the Commissioner had followed the judgment of the Hon''ble Punjab & Haryana High Court in the case of Commissioner of Income-tax v. Anand Samp [1980] 121 ITR 873. In this view of the matter, we find that the Hon''ble High Court has already expressed an opinion on the issue on which the Revenue is seeking a reference. In our opinion, we are not entitled to burden the Hon''ble High Court with unnecessary litigation with regard to an issue on which we have already been advised. We, therefore, reject the reference application."

4. Feeling aggrieved, the Commissioner of Income Tax has come to this court u/s 256(2) of the Act.

5. Shri Ashok Bhan, appearing for the Revenue, has urged that since there is a conflict of opinion between this court and the Allahabad High Court in Madho Prasad Vs. Commissioner of Income Tax, a question of law did arise and, therefore, the Tribunal should have referred the matter for the opinion of this court u/s 256(1) of the Act, and since the Tribunal has failed to do so, a mandamus should be issued to the Tribunal u/s 256(2) of the Act. Reliance is placed on a decision of the Allahabad High Court in CIT v. Vindeshwari Trading Corporation [1978] 113 ITR 791 wherein the High Court had directed the Tribunal to state the case in respect of a question of law on which two Full Benches of the Allahabad High Court had taken one view which was followed by the Tribunal, since it was contrary to the view taken by a Full Bench of the Andhra Pradesh High Court. On those facts, it was concluded that since there is a conflict of opinion between two High Courts on the question sought to be raised by the Commissioner, which does not stand concluded by any authority of the Supreme Court, it cannot be said that no statable question "of law arises from out of the appellate order of the Tribunal. The learned counsel also relied on a decision of the Supreme Court in Commissioner of Wealth Tax West Bengal Vs. Imperial Tobacco Co. of India Ltd., and specific reliance was placed on the following observation (headnote):

"There does appear to be divergence of opinion among the High Courts as to the meaning of the word " information " in Section 34(1)(b) of the Income Tax Act. In view of that divergence of opinion a question of law arose in this case as to the interpretation of the word " information " in Section 17(b) of the Wealth-tax Act and the question of law should have been referred by the Tribunal."

6. A reading of the report shows that the case before the Supreme Court arose from the State of West Bengal but the divergence of opinion which was noticed, related to the High Courts other than the Calcutta High Court. The Income Tax Tribunal declined to make a reference and thereafter the High Court also summarily dismissed the application and did not direct the Tribunal to state a

case. On those facts, the Tribunal was directed to state a case referring the question of law arising in the case either to the High Court or to the Supreme Court.

7. We are of the considered view that Commissioner of Wealth Tax West Bengal Vs. Imperial Tobacco Co. of India Ltd., has no bearing on the point in issue before us because there was no decision of the Calcutta High Court as to the interpretation of the word "information" in Section 17(b) of the W.T. Act and that is why it was held that a question of law did arise for the decision of the High Court. In the peculiar facts of that case, since there was a serious conflict among the various High Courts other than the Calcutta High Court, it was left to the Tribunal to refer the case to the High Court or Supreme Court. But in the case before us, the question of law involved in the case was fully covered by a Division Bench judgment of this court in Anand Samp's case [1980] 121 ITR 873 and, therefore, the Tribunal was right in declining to refer the case for the opinion of this court because this court had already expressed the opinion on that law point and no useful purpose would have been served. Similarly, we find that no useful purpose will be served by issuing a mandamus u/s 266(2) of the Act because it has not been shown to us that the opinion already expressed by this court in Anand Sarup's case is erroneous. This court has already disagreed with the view taken by the Allahabad High Court in Madho Prasad Vs. Commissioner of Income Tax, and therefore, the proper remedy of "the Commissioner is to take the matter to the Supreme Court to have this case heard and decided along with Anand Sarup's case and to have the conflict between the two High Courts resolved. Issuing a mandamus u/s 256(2) of the Act would be a futile exercise because following the decision in Anand Samp's case [1980] 121 ITR 873 the answer will be given against the Commissioner. In any event, it may be deemed that we did issue a mandamus u/s 256(2) of the Act, but answered the question of law against the Commissioner on the basis of the earlier decision of this court in Anand Samp's case. Therefore, viewing the case from any angle, we find that no relief can be granted to the Commissioner by this court.

8. Adverting to Vindeshwari Trading Corporation's case [1978] 113 ITR 791 with respect to the learned judges of the Allahabad High Court, we have not been able to persuade ourselves to subscribe to their view. If a matter within the court is covered by two Full Bench judgments of that court, then within that court, it has to be treated that the question of law is settled. As already observed in the preceding paragraph, it would be a futile exercise for the Tribunal to refer the matter to the High Court and if the Tribunal declines, then to issue a mandamus to the Tribunal to refer the matter because, in either eventuality, the answer would be a foregone conclusion. That is why we have said above that, in such a situation, it should be deemed that the case was stated to the High Court and, following the earlier decision/decisions, it answered the question on those lines.

9. With the aforesaid observations, the application is dismissed, but with no

order as to costs.