
(1980) 03 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 405 of 1976

COMMISSIONER OF Income Tax, M.P.

APPELLANT

Vs

THAKURLAL.

RESPONDENT

Date of Decision : 21-03-1980

Acts Referred:

Income Tax Act, 1961 — Section 139, 147, 148, 43

Citation : (1981) 132 ITR 398

Hon'ble Judges : Sohani, J

Bench : Division Bench

Judgement

SOHANI J. - By this reference under 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 fact 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 s. 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 ?"

The material facts giving rise to this reference briefly are as follows : The assessee is a registered firm carrying on the business of extracting manganese ore and selling it. The assessment year in question is 1961-62. The assessment was originally framed by the ITO on January 16, 1963. Subsequently, the ITO issued a notice under s. 148 of the Act on January 31, 1966 in exercise of the power conferred on him by cl. (b) of s. 147 of the Act. The assessee filed a return under protest. The ITO, overruling the objection of the assessee about the validity of reassessment proceedings, completed reassessment on January 12,

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 s. 148(2) of the Act, has 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.

Now, as regards the first question, it would be useful to refer to the provision 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 under sections 147, the Income Tax Officer shall serve on the assessee a notice containing all or any of the requirement which may be included in a notice under sub-section (2) of section 139; and the provision 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 reason for doing so."

In view of sub-s. (2) of s. 148 of the Act, it is clear that recording of reasons by the ITO before issuing a notice under 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."

In these circumstance, the Tribunal rightly held that the failure to record reason as contemplated by s. 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.

As regards the second question referred to this court, the 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.

For all these reason, 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 circumstance of the case. Parties shall bear their own

costs of this reference.