(1990) 06 CAL CK 0006

In the Calcutta High Court

Case No : Matter No. nil of 1990

Dewasharif Cold Storage (P.) Ltd. APPELLANT

Vs

Income Tax Appellate Tribunal, ''C'' Bench and Another RESPONDENT

Date of Decision : 05-06-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 256, 257

Citation : (1990) 186 ITR 140

Hon'ble Judges : Susanta Chatterjee, J

Bench : Single Bench

Judgement

Susanta Chatterji, J.—The present writ petition has been filed by the petitioner-company being an Income Tax assessee for the issuance of a writ of mandamus commanding respondent No. 1, Income Tax Appellate Tribunal ''C'' Bench. Calcutta, to cancel and/or rescind the order dated October 31, 1989, and all proceedings relating thereto and to draw up a statement of the case and refer it through its president direct to the Hon''ble Supreme Court of India for the assessment years 1981-82, 1982-83 and 1983-84 as provided u/s 257 of the Income Tax Act, 1961, and other consequential reliefs on the ground that, according, to the terms of Section 257 of the Income Tax Act, respondent No. 1, the Tribunal was bound to draw up a statement of the case and refer it through its president direct to the Hon''ble Supreme Court inasmuch there is a conflict in the decisions of the two High Courts in respect of the particular question of law involved in the present case,

2. Having heard counsel for the petitioner and the Income Tax authorities at length, it appears that being aggrieved by the order of the Commissioner of Income Tax (Appeals), the petitioner preferred an appeal before the Income Tax Appellate Tribunal and the matter came to a Division Bench of this court in a reference for the earlier year and the reference case was disposed of answering the point against the assessee, A prayer for leave to appeal to the Supreme Court was sought for and the same was also refused. Being aggrieved, the

petitioner had gone to the Hon''ble Supreme Court by filing a SLP and the same is still now pending. It appears from the impugned order being annexure "C" to the petition that the Income Tax Appellate Tribunal recorded that learned counsel for the assessee conceded that the appeals were filed to keep the matters alive and it has been sought to be explained before this court that, in spite of the decision in the special leave petition, the decision of the Tribunal for the assessment for the subsequent years would be final and unless a fresh reference is made by the Tribunal u/s 257 of the Income Tax Act, the petitioner will suffer irreparable loss and injury.

3. It is also contended that, while the Hon''ble Supreme Court is in seisin of the matter, there is no bar for the Tribunal to refer the dispute to the Hon''ble Supreme Court by invoking the provisions of Section 257 of the Income Tax Act which indicate, inter alia, that if, on an application made u/s 256, the Appellate Tribunal is of the opinion that, on account of a conflict in the decisions of High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it through its president direct to the Supreme Court.

4. It has to be appreciated that, in the instant case, the Tribunal had already made a reference to the High Court on the self-same point for the previous assessment year and the reference had been disposed of by the Division Bench of this court and the matter had ultimately gone to the Hon''ble Supreme Court and the SLP has not been admitted. There is no question of consideration by the Tribunal of a fresh application u/s 256 to invoke the provisions of Section 257 of the said Act as argued before this court. It is open to the petitioner to move the Hon''ble Supreme Court to ask for an appropriate order if the SLP is admitted. It is needless to come to this writ court for a direction to the Tribunal to refer the matter on the self-same point of law for the subsequent year to the Hon''ble Supreme Court. This court does not appreciate the stand taken by the petitioner and does not at all find that the Tribunal has acted irregularly and/or illegally in not invoking the provisions as provided in Section 257 of the said Act which is not mandatory.

5. Considering this aspect of the matter, this writ court is not inclined to interfere with the matter and hence the petition is rejected.

6. There will be no order as to costs.

7. All parties concerned to act on a signed copy of this dictated order on the usual undertaking.