(1995) 12 MP CK 0044

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 125 of 1988

Ganga Cut Piece Centre — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 14-12-1995

Acts Referred:
Income Tax Act, 1961 — Section 185, 211, 256

Citation : (1996) 136 CTR 206 : (1996) 219 ITR 201 : (1996) 88 TAXMAN 200

Hon'ble Judges : S.B. Sakrikar, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : K.N. Puntambekar, for the Appellant; D.D. Vyas, for the Respondent

Judgement

A.R. Tiwari, J.—The applicant (Messrs. Ganga Cut-piece Centre, Dewas), has filed this application u/s 256(2) of the Income Tax Act, 1961 (for short "the Act").

2. Briefly stated, the facts of the case are that the applicant is a partnership firm carrying on the business of sale and purchase of cloth. Initially, Smt. Gangabai and her son, Ramchandra, were partners of the firm in equal share, The firm came into existence on March 24, 1974, and was registered under the Income Tax Act, Subsequently, another partner, named Smt, Indirabai, was introduced and the apportionment of shares was revised. The applicant applied for registration of the firm under the Income Tax Act for the assessment year 1976-77, which was refused by the Income Tax Officer but in appeal the Income Tax Appellate Assistant Commissioner allowed the registration of the firm. The Department then preferred an appeal to the Tribunal. The Tribunal allowed the appeal and declined the registration. The applicant then filed an application u/s 256(1) of the Act. The Tribunal referred the question as to whether the Tribunal was correct in holding that the firm was not entitled to registration for the assessment year in question. The case was registered in this court as Miscellaneous Civil Case No. 244 of 1979; Ganga Cut Piece Centre Vs. Commissioner of Income Tax,). It was decided on April 27, 1981, against the applicant. The matter is now said to be pending in the Supreme Court through

SLP No. 7318 of 1981. On September 26, 1983, it was registered as Civil Appeal No. 8445 (NT) of 1985. A similar question arose for the subsequent assessment years, i.e., 1977-78 and 1978-79. The question was, however, decided against the applicant in view of the order passed in Miscellaneous Civil Case No. 244 of 1979 (see Ganga Cut Piece Centre Vs. Commissioner of Income Tax,) by this court. Aggrieved, the applicant filed the application before the Tribunal u/s 256(1) seeking statement of the case and reference of the question in regard to the registration as well as eight other incidental questions chronicled in the application in para, (v), vide Sub-paras, (a) to (i), on the ground that the matter was pending before the Supreme Court. The application was rejected by the Tribunal in view of the decision rendered by this court earlier on April 27, 1981 (see Ganga Cut Piece Centre Vs. Commissioner of Income Tax,). The applicant thereafter has filed this application u/s 250(2) of the Act.

3. We have heard Shri K.N. Puntambekar, learned counsel for the applicant/ assessee, and Shri D.D. Vyas, learned counsel for the non-applicant/Department.

4. Shri Puntambekar submitted that the Tribunal be directed to state the case and refer the proposed questions in view of the pendency of similar questions before the Supreme Court in the aforesaid civil appeal.

5. Shri Vyas, on the other hand, submitted that pendency of the case before the Supreme Court does not furnish any valid ground for sucking the direction about reference of the questions and that if the applicant succeeds in the Supreme Court lie may apply for rectification before the income tax Officer u/s 154 or before the Appellate Tribunal u/s 254(2) of the Act within the period prescribed for that purpose. Counsel, therefore, submitted that this application is inutile and that the applicant is not without remedy.

6. Earlier the question of registration is decided against the applicant. The decision is reported in Ganga Cut Piece Centre Vs. Commissioner of Income Tax, .

7. In Commissioner of Wealth-tax Vs. Smt. Usha Devi (Lrs. of H.H. Maharaja Yeshwant Rao Holkar), it is held that the pendency of the same issues before the Supreme Court is no ground for directing the reference. The point of controversy stands decided by this court against the assessee and the Tribunal having followed the decision of this court, we hold that no referable questions arise in this case.

8. That being so, we reject the application leaving the applicant free to resort to appropriate remedy when the occasion so arises, as noted above, if permissible under the law.

9. There shall, however, be no order as to costs.

10. Counsel fee on either side shall, however, be Rs. 750, if certified.