(1985) 12 KAR CK 0005

In the Karnataka High Court

Case No : F.R. No''s. 3243 and 6171 of 1985

Inspecting Assistant Commissioner — APPELLANT

Vs

N. Vajram Setty — RESPONDENT

Date of Decision : 13-12-1985

Acts Referred:

Citation : (1986) 24 TAXMAN 753

Hon'ble Judges : Narayana Rai Kudoor, J;K.S. Puttaswamy, J

Bench : Division Bench

Advocate : K. Srinivasan, H. Raghavendra Rao and G. Sarangan, for the Appellant; S.P. Bhat, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Puttaswamy, J.—As the questions that arise for determination in these cases are common, we propose to dispose of them by a common order. In these petitions made u/s 261 of the income tax Act, 1961 (''the Act''), the petitioner, who was the appellant in income tax Appeal Nos. 17 to 20 of 1976, has sought for certificates of fitness to appeal to the Supreme Court against our order made in those cases on 6-3-1985.

2. On these petitions, the office has raised an objection as to their maintainability u/s 261. We have perused the office objection and heard Sriyuths K. Srinivasan and G. Sarangan, the learned counsels for the petitioner in these cases and Shri S.P. Bhat, the learned advocate, who had taken notice for the respondent in each of these cases on the same.

3. Sriyuths K. Srinivasan and G. Sarangan contend that the term ''any judgment of the High Court delivered on a reference'' occurring in section 261 comprehend an order made on an appeal under Chapter XXA of the Act and, therefore, these petitions were maintainable under that provision.

4. Shri Bhat in supporting the office objection contends that the plain language of section 261 does not comprehend an order made on an appeal under Chapter

XXA.

5. Section 261 on the construction of which the question turns reads thus:

An appeal shall lie to the Supreme Court from any judgment of High Court delivered on a reference made u/s 256 in any case in which the High Court certifies to be a fit one for appeal to the Supreme Court.

This section, in very clear and unambiguous terms, empowers a High Court to grant a certificate of fitness to appeal only on a reference made to the High Court u/s 256 of the Act. The scope and ambit of a reference u/s 256 is entirely different to an appeal provided under Chapter XXA. The words ''on a reference made u/s 256'' occurring in section 261 cannot by any stretch of imagination be interpreted as an appeal made under chapter XXA. The omission to include an order made under Chapter XXA is somewhat unintentional and is even strange. But that legislative omission cannot be supplied by Courts. We are of the view that the Parliament had to take note of this omission and remedy the situation. On this view, the objection raised by the office is correct and has to be upheld. We have, therefore, no choice except to dismiss these petitions as not maintainable.

6. But at this stage, Sriyuths K. Srinivasan and G. Sarangan, relying on the observations of the Full Bench in Keshava S. Jamkhandi v. Ramachandra S. Jamkhandi [1980] 2 KLJ 432, make oral applications for certificates of fitness to appeal to the Supreme Court under articles 133 and 134A of the Constitution on the ground that the cases decided by us raise substantial questions of law of general importance and they need to be decided by the Supreme Court.

7. Sri Bhat opposing the oral applications contends that the questions decided by us are essentially on questions of fact and do not raise any substantial questions of law of general importance which need to be decided by the Supreme Court.

8. In Keshava S. Jamkhandi''s case (supra), Malimath, J. (as his Lord ship then was), speaking for the Full Bench, has expressed that the question when an oral application is made, has to be decided on the facts and in the circumstances of each case.

9. We are informed that these petitions are the very first petitions made before this Court u/s 261 in proceedings arising under Chapter XXA and, thus, there was no occasion for the Supreme Court or this Court to express its opinion. We are of the view that on the facts and in the circumstances of these cases, it is proper to entertain the present oral applications made before us and deal with them on merits. We, accordingly, proceed to deal with them on merits.

10. We have perused our order made in income tax Appeal Nos. 17 to 20 of 1976 affirming the order of the Tribunal on the ground that the same does not raise a question of law. We are of the view that our orders in income tax Appeal Nos. 17 to 20 of 1976 do not raise substantial questions of law of general importance that need to be decided by the Supreme Court. We cannot, therefore, grant the

oral applications made by the petitioner.

11. In the light of our above discussion, we make the following orders and directions : (i) We uphold the office objection raised in these cases and dismiss the SCLAP''s filed by the petitioner u/s 261 of the Act as not maintainable.

(ii) We reject the oral applications made by the petitioner for grant of a certificate of fitness to appeal against our orders in income tax Appeal Nos. 17 to 20 of 1976 under articles 133 and 134A of the Constitution on merits.

We, however, direct the parties to bear their own costs.