

(2004) 09 MP CK 0001

In the Madhya Pradesh High Court

Case No : IT Appeal No. 70 of 1999 28th September, 2004

ITO

APPELLANT

Vs

Phul Chand Kachur Lal

RESPONDENT

Date of Decision : 28-09-2004

Acts Referred:

Income Tax Act, 1961 — Section 260A

Citation : (2005) 143 TAXMAN 229

Hon'ble Judges : Ashok Kumar Tiwari, J;A.M. Sapre, J

Bench : Full Bench

Judgement

AM. Sapre, J:

This is an appeal filed by the revenue (CIT) u/s 260A of the Income Tax Act against an order dated 29-10-1998, passed by Tribunal in ITA No. 1083/Ind/1994. This appeal was admitted for final hearing on following substantial question of law by this court on 8-5-2000:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the interest on the debit balance in the accounts of the partners and the members of the family concerned even when no interest was charged by the assessee-firm ?"

2 " Record perused, because none appeared for the parties despite notice of the appeal.

3. Having perused record of the case and in particular the order of Tribunal impugned, we are of the view that this appeal has no substance.

4. As a matter of fact, the revenue itself has conceded before the Tribunal that the issue has already been decided against the revenue in the case of this very assessee in the earlier years by the Tribunal and no appeal/reference was taken to this court. In other words, when the issue sought to be raised in this appeal was already decided against the revenue in the earlier years by the Tribunal and

it is in the light of that decision, if CIT (A) for the year in question gives relief to the assessee, then revenue ought not to have filed the appeal arising out of this case.

5. One can appreciate if the revenue has not accepted the decision of Tribunal rendered in the earlier year in favour of assessee and has carried the issue to this court either in appeal/reference as the case may be. In such circumstance, one can say that the decision is sub judice in higher court and hence, need to be decided on merits. Here is a case where revenue virtually gave up their challenge before Tribunal by accepting the verdict to be against them and on giving such concession now wants to file appeal against such verdict. At least, it was expected of from revenue not to concede the issue and ask the Tribunal to decide it by taking note of the submissions of Tribunal and the grounds on which the revenue has not accepted the earlier decision of the Tribunal rendered in earlier assessment years. Nothing has been done on any of these lines except to file appeal "

6. Be that as it may, in our opinion, even on facts and merits, no substance in the appeal is noticed. The dispute relates to assessment year 1986-87. It is in regard to deletion of one entry amounting to Rs. 1,03,060 towards interest account. Similar entry was also appearing in the accounts of assessee in the earlier assessment years. However, though it was not deleted by assessing officer, the same was deleted by the Tribunal by assigning reasons in support of deletion. The Tribunal for the year in question relied upon the reasoning assigned for such deletion"made for earlier years and granted relief to the assessee.

7. We find no ground to sustain the addition made by assessing officer. In the facts of this case, the reasoning assigned by the Tribunal appears to be legal, proper and just. It does not call for any interference.

8. Appeal is thus found to be of no substance. It fails and is dismissed. No costs.