
(2001) 03 KAR CK 0099
In the Karnataka High Court
Case No : Income Tax A. No. 12 of 2001

J. Bheemananda Gupta

APPELLANT

Vs

Assistant Commissioner of Income Tax

RESPONDENT

Date of Decision : 28-03-2001

Acts Referred:

Citation : (2001) 168 CTR 464 : (2001) 250 ITR 537 : (2001) 4 KCCR 204 SN

Hon'ble Judges : R. Gururajan, J;M.F. Saldanha, J

Bench : Division Bench

Advocate : K.R. Prasad, for the Appellant; E.R. Indrakumar, for the Respondent

Judgement

M. F. Saldanha, J.—We have heard the appellant's learned counsel.

2. The point canvassed by him does require consideration and, consequently, the appeal is formally admitted. The learned advocate Sri E. R. Indra Kumar, who is standing counsel on behalf of the Department appears on behalf of the respondents and has been heard. He shall instruct his office to ensure that the memo of appearance is filed within two weeks.

3. Since we have heard learned counsel on both sides and since we are of the view that the issue involved in this appeal certainly raises an arguable point we have examined the order passed by the Tribunal for purposes of ascertaining as to how the Tribunal has dealt with the issue in question. We find from paragraph 5 of the impugned order that apart from some totally generalised observations which are to the effect that the learned Judicial Member has considered the facts on record, there is virtually no reasoning or findings recorded as is basic in a judicial order. What the Tribunal seems to be overlooking is that being the ultimate fact-finding authority there is a very high degree of responsibility cast on the Tribunal because correction of errors thereafter in many cases may not be even possible. More importantly, where there is a legal duty enjoined on a forum, that duty must be discharged and cannot be bypassed. Invariably, an issue of fact is also intertwined with a legal aspect. As far as the present case is

concerned, the question as to whether the assessee was bound by the provisions, statements or not and if so, to what extent, has been the subject matter of several decisions. In this view of the matter, it was incumbent on the Tribunal to have considered the case carefully on the merits and to have given a well reasoned order. In the decision reported in Lalchand Bhagat Ambica Ram Vs. Commissioner of Income Tax, Bihar and Orissa, , the Supreme Court has observed as follows (headnote) :

"The Income Tax Appellate Tribunal is a fact-finding Tribunal and if it arrives at its own conclusions of fact after due consideration of the evidence before it the court will not interfere. It is necessary, however, that every fact for and against the assessee must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them and what were the findings reached on the evidence before it. The conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice and if there are any circumstances which require to be explained by the assessee, the assessee should be given an opportunity of doing so. On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises, nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures and surmises, and if it does anything of the sort, its findings even though on questions of fact will be liable to be set aside by the court."

4. We have reproduced these observations in the hope that the Tribunal will take serious note of them.

5. We also need to impress upon the Tribunals that the High Court will not tolerate any situations where the forum abdicates its responsibilities. The High Court is not to be substituted for an appellate authority and if the appellate authority does not do its duty, it cannot be expected that the aggrieved party will have to go one stage higher in order to obtain justice. The correct procedure is to ensure that the authority at whichever level, which had heard the case, does its duty according to law. Though remands are contra indicated we have specifically remanded the present case to the Tribunal in view of the aforesaid well defined principles.

6. The impugned order is accordingly set aside. The Tribunal to issue fresh notice to the parties, hear them and redecide the case according to law.

7. We did hear the respondents' learned counsel at some length. Inter alia, he tried to defend the order by submitting that in those of the cases where the appellate authority reaches a finding that interference is not necessary, it may not be required to record detailed observations or reasoning. While there is no quarrel with that principle, what we need to reiterate is that even in such instances, the order does not have to be long but the quality of the order must

indicate that the authority has applied its mind to all aspects of the case factually and legally and that there is justification for its decision irrespective of whether it concurs or differs.

8. The appeal accordingly succeeds and stands disposed of. No order as to costs.