(1982) 11 MP CK 0016

In the Madhya Pradesh High Court

Case No : M.C.C. No''s. 97, 101 and 102 of 1981

Kailashchandra APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 29-11-1982

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 256(2)

Citation : (1984) 145 ITR 300 : (1985) 22 TAXMAN 487

Hon'ble Judges : R.K. Vijayvargiya, J;G.G. Sohani, J

Bench : Division Bench

Advocate : G.M. Chaphekar and U. Thatte, for the Appellant; R.C. Mukati, for the Respondent

Judgement

Sohani, J.—The order in this case shall also govern the disposal of Misc. Civil Cases No. 101 and 97 of 1981, as all these applications u/s 256(2) of the I.T. Act, 1961 (hereinafter referred to as " the Act"), arise out of a common order passed by the Income Tax Appellate Tribunal, Indore Bench.

2. The assessment years in question are 1973-74, 1974-75 and 1976-77. The applicant was employed as a manager of the firm, M/s. Mahavir Industrial Works, which had applied for registration. The ITO refused registration on the ground that the firm was not genuine but was the concern of the applicant. As a consequence of the refusal of registration of the firm, the ITO assessed the entire income of the firm in the hands of the applicant. Aggrieved by that order, the applicant preferred an appeal before the AAC. The firm, M/s. Mahavir Industrial Works, had also preferred an appeal against the order of the ITO refusing the registration. The AAC allowed the appeal preferred by the firm against the order passed by the ITO refusing registration. As a consequence of that order, the AAC allowed the appeal preferred by the applicant. Aggrieved by the orders passed by the AAC, the Department preferred appeals before the Tribunal. The Tribunal allowed the appeal of the Department in the case of the firm holding that the firm was not genuine. By another order, the Tribunal allowed the appeal of the

Department in the case of the applicant. Hence, aggrieved by that order, the applicant had preferred an application u/s 256(1) of the Act before the Tribunal but that application was rejected. Hence, the applicant has filed these applications.

3. Aggrieved by the order passed by the Tribunal refusing to make a reference, M/s. Mahavir Industrial Works had preferred applications u/s 256(2) of the Act before this court, which we have disposed of today by holding that a question of law arose out of the order passed by the Tribunal. We have accordingly directed the Tribunal to state the case and refer the question of law stated in our orders to this court for its opinion [see Mahavir Industrial Works Vs. Commissioner of Income Tax,]. In view of our orders passed in those cases, we have come to the conclusion that the question as to whether, on the facts and in the circumstances of the case, there was any material before the Tribunal for coming to the conclusion that the business of M/s. Mahavir Industrial Works belonged to the assessee and the question as to whether, on the facts and in the circumstances of the case, there was any material before the Tribunal for holding that no genuine firm had come into existence, are questions of law.

4. The applications are, therefore, allowed. The Tribunal is directed to state the case and refer the following questions of law to this court for its opinion:

"(1) Whether, on the facts and in the circumstances of the case, there was any material before the Tribunal for coming to the conclusion that the business of M/s. Mahavir Industrial Works belonged to the assessee ?

(2) Whether, on the facts and in the circumstances of the case, there was any material before the Tribunal for holding that no genuine firm in the name and style of M/s. Mahavir Industrial Works had come into existence ? "

5. Parties shall bear their own costs of this reference.