
(1996) 02 MP CK 0032

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 31 of 1991

Laddha Traders

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 26-02-1996

Acts Referred:

Income Tax Act, 1961 — Section 256(2)

Citation : (1996) 222 ITR 754

Hon'ble Judges : N.K. Jain, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : G.M. Chaphekar and S.S. Samvatsar, for the Appellant; D.D. Vyas, for the Respondent

Judgement

A.R. Tiwari, J.—The applicant/assessee has filed this application u/s 256(2) of the Income Tax Act, 1961 (for short "the Act"), seeking direction to the Tribunal to state the case and refer the undernoted questions of law arising out of the order passed by the Tribunal on April 10, 1990, in I. T. A. No. 553/Ind of 1985 for the assessment year 1980-81 :

"(1) Whether, on the facts and circumstances of the case, there is any legal material for the conclusion of the Tribunal that there is concealment of sale to the extent of Rs. 1,40,340 ?

(2) Whether, on the facts and circumstances of the case, the finding of the Tribunal that there was concealment of sales of Rs. 1,40,340 is perverse ?"

2. Briefly stated, the facts of the case are that the applicant filed the return, In the course of the assessment proceedings, the Income Tax Officer found that on several days the sales of kerosene as recorded in the cash book were far in excess of the sales when compared with sales vouchers of that day. It was also noticed that on some days the sales of kerosene as recorded in the cash book were less than those as shown in the sales vouchers. The Income Tax Officer, therefore, called upon the applicant to show cause why the difference in sales

between the cash book and vouchers, priced at Rs. 1,40,340, be not treated as concealed sales. The applicant showed the cause in this way that all purchases were made from the Indian Oil Corporation Limited from its Indore depot. The applicant also submitted several documents to show that there was in fact no concealment and also explained the difference in the books and vouchers. The Income Tax Officer, however, did not feel satisfied and made addition of Rs. 1,40,340 and sought the approval of the Inspecting Assistant Commissioner u/s 144B of the Act. The Inspecting Assistant Commissioner approved the proposed addition on the basis of which the Income Tax Officer passed the order of addition of the aforesaid amount (annexure "B"). The applicant then filed the appeal before the Commissioner of Income Tax (Appeals) registered as I. T. A. No. 161/84-85/861. The Commissioner of Income Tax (Appeals) allowed the appeal in part on March 4, 1985, but rejected the contention with regard to the addition of the aforesaid amount (annexure "C"). The applicant then filed second appeal registered as I. T. A. No. 553/Ind of 1985 before the Tribunal. The Income Tax Officer also filed an appeal before the Tribunal registered as I. T. A. No. 488/Ind of 1989. Both these appeals were dismissed by the Tribunal by common order dated April 10, 1990 (annexure "D"). The applicant then filed application u/s 256(1) of the Act which was registered as R. A. No. 134/Ind of 1990. The application was rejected on November 21, 1990. The applicant then filed the present application.

3. We have heard Shri G.M. Chaphekar, learned senior counsel, with Shri S.S. Samvatsar, for the applicant/assessee, and Shri D.D. Vyas, learned counsel for the non-applicant/Department, Counsel for the applicant submitted that when all purchases were made from the known supplier, i.e., Indian Oil Corporation Ltd., and the entire record was placed before the authorities in an effort to convince that there was no concealment of sales, there was no justification to make the addition to the extent noted above. He also submitted that the addition is without any evidentiary backing.

4. Shri D.D. Vyas, on the other hand, submitted that the questions sought to be referred are not questions of law but are based on the findings reached appropriately on appreciation of facts.

5. We have read the order. As we are making a direction to state the case and refer one question out of the two questions, as one of law, for our consideration and opinion, we do not deem it proper to express any opinion on the merits of the matter. If on hearing the reference at a later stage it is found that the finding is based on no evidence, appropriate opinion can be recorded.

6. In *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, it is held as under (at page 882 of AIR 1978 SC) :

"Independently of natural justice, judicial review extends to an examination of the order as to its being perverse, irrational, bereft of application of the mind or without any evidentiary backing."

7. In our view, the undernoted question does arise out of the order of the Tribunal :

"Whether, on the facts and circumstances of the case, there is any legal material for the conclusion of the Tribunal that there is concealment of sale to the extent of Rs. 1,40,340 ?"

8. We, therefore, allow this miscellaneous civil case and direct the Tribunal to state the case with sufficient particulars and to refer the aforesaid question for our opinion within ten months from the date of the receipt of the copy of the order passed in this case.

9. We leave the parties to bear their own costs of this case as incurred.

10. Transmit a copy of this order to the Tribunal immediately in accordance with the law.

11. Counsel fee for each side is, however, fixed at Rs. 750, if certified.