(2004) 12 AHC CK 0255

In the Allahabad High Court

Case No : Income-tax Reference No. 140 of 1989

Mannulal Matadeen APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 21-12-2004

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 256(1), 263

Citation : (2005) 277 ITR 346 : (2006) 152 TAXMAN 125

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Division Bench

Advocate : S.D. Singh, for the Appellant; Dhananjay Awasthi, for the Respondent

Judgement

1. The Income Tax Appellate Tribunal, Allahabad, has referred the following two questions of law u/s 256(1) of the Income Tax Act, 1961, hereinafter referred to as "the Act", for opinion to this court :

"1. Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in upholding the order passed by the Commissioner of Income Tax u/s 263 of the Income Tax Act, 1961, dated March 16, 1985, treating the Income Tax Officer''s order as erroneous and prejudicial to the interests of the Revenue ?

2. Whether the Appellate Tribunal was justified to hold that the Commissioner of Income Tax acted within his power to initiate proceedings u/s 263 of the Income Tax Act ?"

2. The reference relates to the assessment year 1981-82.

3. Briefly stated the facts giving rise to the present reference are as follows :

The applicant is a registered firm. The assessment was completed by the Income Tax Officer on March 19, 1983, u/s 143(3) of the Act. Subsequently, it was found by the internal audit party that the accounts of two partners, namely, Shri Kashi Nath and Shri Krishna Gopal, as appearing in the books of the applicant firm were debited on March 22, 1980, with the help of transfer entries by Rs. 80,000 and Rs. 1,75,000, respectively, by crediting a sum of Rs. 2,55,000 to the account of M/s, M. M. Enterprises, a sister concern of the applicant firm, whose partners are close relatives of Shri Kashi Nath and Shri Krishna Gopal. Acting on the basis of the said report of the internal audit party the Commissioner of Income Tax examined the records and after coming to the conclusion that the assessment order was erroneous and also prejudicial to the interests of the Revenue initiated proceedings u/s 263 of the Act. After giving opportunity of hearing to the applicant and taking into consideration the submission made therein the Commissioner of Income Tax had set aside the assessment order and had directed the interest of Rs. 37,750 allowed to M/s. M.M. Enterprises in a sum of Rs. 2,55,000 as not allowable. He directed the Income Tax Officer to recompute the income of the applicant by disallowing a sum of Rs. 37,750. The order of the Commissioner of Income Tax was upheld by the Tribunal.

4. We have heard Sri S. D. Singh, learned counsel for the applicant, and Sri Dhananjay Awasthi, learned standing counsel appearing for the Revenue.

5. It is not in dispute that by transfer entries made in the applicant''s books of account on March 22, 1980, the capital account of M/s. Kashi Nath and Krishna Gopal were debited by Rs. 80,000 and Rs. 1,75,000, respectively, and the said amount was credited to M/s. M. M. Enterprises, a sister concern of the applicant, in which the partners are the close relatives of the aforementioned two creditors. There was neither inflow nor outflow of funds from the applicant firm. Only the debtor and creditor have changed. Further we find that M/s. Kashi Nath and Krishna Gopal were being paid interest at the rate of 6 per cent, per annum on the credit balance with the applicant firm whereas M/s. M. M. Enterprises has been paid interest at the rate of 18 per cent, per annum on the credit balance. The irresistible conclusion is that this exercise was done by the applicant just to bring down its taxable income with the higher amount of interest which it may be able to show as per the accounts of M/s. M. M. Enterprises. Further the Commissioner of Income Tax has found that even though the account is said to have been debited on March 22, 1980, the journal entry was passed some time in January 1981, which cast a doubt about the transaction. Further, there is no escape from the conclusion that the Income Tax Officer had not made necessary enquiries before allowing the deduction of interest to M/s. M. M. Enterprises on the credit balance, which resulted in the order not only being erroneous but also prejudicial to the interests of the Revenue. The Commissioner of Income Tax, was therefore, justified in drawing the proceeding u/s 263 of the Act and also disallowing the amount of interest to be paid to M/s. M. M. Enterprises as it was only a paper transaction.

6. We, accordingly, answer both the questions in the affirmative, i.e., in favour of the Revenue and against the assessee. However, there shall be no order as to costs.

