(1990) 02 RAJ CK 0013

In the Rajasthan High Court

Case No : Income Tax Reference Application No. 139 of 1988

Moti Trust APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 13-02-1990

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

Citation : (1990) 185 ITR 358

Hon'ble Judges : Mohini Kapur, J;Bhargava, J

Bench : Division Bench

Advocate : P.K. Kasliwal, for the Appellant; V.K. Singhal, for the Respondent

Judgement

1. This is an application u/s 256 of the Income Tax Act by which the assessee has raised the following questions :--

"(i) Whether the income having been taxed in the hands of the beneficiaries, it can be taxed again in the hands of the assessee-trust ?

(ii) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in dismissing the application concerning the question, to be a legal one but assuming that the same point was decided earlier ?

(iii) Whether, under the facts and circumstances of the case, the Income Tax Officer is justified in charging tax from the appellant, upholding the fact that the income from the appellant-trust was separately taxed in the hands of the beneficiaries in their individual status ?

(iv) Whether, under the facts and circumstances of the case, the learned Tribunal was justified in dismissing the application assuming the question to be a legal one but the same point was decided earlier though the SLP in the Supreme Court is pending ?"

2. It may be stated that the assessee had moved an application u/s 256 of the

Act before the Tribunal and had raised the following three questions and requested that the same may be forwarded to this court for its opinion :

"(a) Whether, under the facts and circumstances of the case, the Tribunal was justified in holding that the assessee is liable to tax when the beneficiaries had been taxed ?

(b) Whether, under the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that the beneficiaries have no title to this income (trust income) ?

(c) Whether, under the facts and circumstances of the case, the income tax Appellate Tribunal was justified in dismissing the appeal on alternate grounds ?"

3. We have heard learned counsel for the parties and also perused the record of the case. The assessee cannot be permitted to raise issues in question which were not raised before the Tribunal. Therefore, questions Nos. (ii), (iii) and (iv) which were not raised u/s 256 cannot be allowed to be raised by the assessee u/s 256.

4. With regard to question No. (i), the Tribunal has rejected the application mainly on the ground that this issue has been answered by this court in the assessee''s own case in Moti Trust Vs. Commissioner of Income Tax, It has further been observed that though it is a question of law, as it stands answered, no reference can be made to the High Court on the same question.

5. We have gone through the judgment of this court referred to above and find that the High Court had declined to answer this question and did not permit the assessee to raise the new ground which did not arise out of the order of the Tribunal as the order of the Tribunal showed that no such question was raised before the Tribunal and, as such, the controversy cannot be allowed to be raised for the first time in the reference. Therefore, the Tribunal was wrong when it said that the question has already been answered by this court.

6. We are of the opinion that the following question No. (i) does arise from the order of the Tribunal and we direct the Tribunal to state the case and make a reference to this court for its opinion on the said question.

"(i) Whether the income having been taxed in the hands of the beneficiaries, it can be taxed again in the hands of the assessee-trust ?"

