

(2003) 02 MP CK 0081

In the Madhya Pradesh High Court

Case No : Income Tax R. No. 99 of 1998

M.P. Rajya Van Vikas Nigam Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 25-02-2003

Acts Referred:

Income Tax Act, 1961 — Section 153(2A), 153(3), 250, 254, 256(1)

Citation : (2003) ILR (MP) 523 : (2005) 275 ITR 189

Hon'ble Judges : Dipak Misra, J;A.K.Shrivastava, J

Bench : Division Bench

Advocate : H.S. Shrivastava, for the Appellant; Rohit Arya, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Mishra, J.—This is an application u/s 256(2) of the Income Tax Act, 1961, at the instance of the assessee for calling for a statement of case from the Income Tax Appellate Tribunal (in short "the Tribunal"), on the following questions :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the entire assessment order was not set aside by the Commissioner of Income Tax vide his order dated March 30, 1987, u/s 263?

(ii) Whether the Tribunal was correct in holding that the Commissioner of Income Tax had no jurisdiction to set aside the order of the Assessing Officer as the issue of investment allowance was adjudicated by the Commissioner of Income Tax (Appeals) prior to the order u/s 263?

2. In support of the application it is submitted by Shri H.S. Shrivastava, learned counsel for the assessee, that the Tribunal has grossly erred in not referring the matter to this court though substantial questions of law do arise in the present case. It is urged by him that initially the assessment order was passed on March 1, 1985, and an appeal was preferred by the assessee, which was disposed of on October 10, 1985. After the disposal of the appeal, the matter was taken up by

the Commissioner of Income Tax in exercise of the power u/s 263 of the Act and the said authority by order dated March 30, 1987, set aside the order of assessment and remitted the matter to the Assessing Officer for fresh assessment after affording an opportunity of hearing to the assessee. Thereafter the Assessing Officer proceeded to reassess the assessee and finally passed the order in the month of July, 1992. It is propounded by Mr. Shrivastava that though two questions were put forth before the Tribunal, the question of law, in essence, is that the Assessing Officer could not have proceeded for reassessment in terms of the order passed u/s 263 of the Act inasmuch as more than two years had expired and hence any action taken by the Assessing Officer is not justified because of the expiry of the period of limitation as postulated under Sub-section (2A) of Section 153 of the Act.

3. Mr. Rohit Arya, learned counsel appearing for the Revenue, has submitted that the Department has not given effect to the order passed by the revisional authority u/s 263 of the Act, but has passed the order to comply with the directions issued by the appellate authority by order dated October 10, 1985. It is canvassed by learned counsel for the Revenue that though in the last paragraph of the order passed by the Commissioner, it is mentioned that the assessment order is set aside the said conclusion has to be read in harmony with the conclusion arrived at in the earlier paragraph. The revisional authority had not dealt with the facet which had already been dealt with by the appellate authority, but with other spectrums which were dealt with by the Assessing Officer. It is fairly conceded by him that the Department, being aware of the legal position, has not worked out the aforesaid order passed u/s 263 of the Act. It is contended by him that the order is neither an open nor partial, remand but a further clarificatory order, and therefore, the directions contained in the appellate order can be given effect to.

4. To appreciate the rival contentions raised at the Bar, we have perused the order filed along with this petition. The appellate authority on October 10, 1985, in paragraphs 2 and 3 came to hold as under :

"2. The only grievance of the appellant in this appeal relates to its claim of investment allowance.

3. From the assessment order I find that even though the Income Tax Officer had held that the investment allowance allowable to the appellant was Rs. 1,54,365 in the computation of income, he appears to have overlooked allowing it as a deduction. I therefore direct the Income Tax Officer to allow the investment allowance as per law as a deduction from the appellant's total income."

5. Thus, in appeal the question was related to claim of investment allowance. Thereafter, as is manifest, a proceeding was initiated u/s 263 of the Act. The revisional authority noted the points which the Income Tax Officer had dealt with and catalogued the same. We think it apposite to reproduce the same :

"An amount of Rs. 57,80,935, Rs. 1,59,29,924 was debited in the profit and loss

account towards lease rent. This was allowed by the Income Tax Officer as such. The amount of reasonable lease rent as it was formerly recommended by the National Council of Agriculture was Rs. 33,36,935. There was thus an excess debit of Rs. 1,25,90,990 in this year. The Income Tax Officer should have therefore restricted the claim of admissible lease rent to Rs. 33,38,935 only. Since this was not done there was an excess allowance of Rs. 24,42,000, Rs. 1,25,90,990 under the head "Lease rent".

The Income Tax Officer allowed investment allowance on well and tank costing Rs. 1,42,086 and trolley Rs. 5,15,591, which being not in the nature of plant, investment allowance of Rs. 1,64,490 was therefore wrongly allowed."

6. The assessee appeared before the Commissioner and the Commissioner found that lease rent amounting to Rs. 1,10,89,617 has been worked out only as per the formulae of the Government of Madhya Pradesh, and hence, the Income Tax Officer had not erred in allowing the same and his order was neither erroneous nor prejudicial to the interests of the Revenue. That apart the Commissioner dealt with the amount/sum of Rs. 1,64,490. In that context, the revisional authority came to hold as under :

"Regarding investment allowance of Rs. 1,64,490 wrongly allowed in respect of wells and tanks, it was submitted that well and tanks are plant for the assessee's trade as they are equipment for drawing and handling of water required for the growth of trees for timber. Since as per his order dated March 1, 1985, the Income Tax Officer has specifically refused to allow investment allowance on the well and tanks, therefore, the issue will not arise in the proceedings u/s 263."

7. Thereafter, the revisional authority proceeded to deal with incorrect investment allowance and expressed the views as under :

". . . While allowing this amount of Rs. 1,10,89,617, Rs. 1,44,46,672 the Income Tax Officer has also neither considered the profit and loss account of the assessee nor gone into the question of inadmissible expenses if any, included therein. The assessment is, therefore, considered erroneous and prejudicial to the interests of the Revenue on this point . . .

In regard to incorrect allowance of investment allowance on well, tanks and trolleys the submission of the assessee that the Income Tax Officer has already refused to allow investment allowance on these items, the order of assessment though speaks about the investment allowance but no additions, disallowance appear to have been made in the assessment order. This therefore needs a verification. Since the order of assessment is being set aside on the point of lease rent, the Income Tax Officer is directed to verify the contentions of the assessee and decide the issue of investment allowance on wells, tanks and trolleys afresh in accordance with law."

8. Eventually, the Commissioner of Income Tax held as follows :

"In view of the above discussions, the order of assessment passed by the Income Tax Officer is considered erroneous in so far as it is prejudicial to the interests of the Revenue. Therefore, the order of assessment is set aside and the Income Tax Officer is directed to make a fresh assessment in accordance with law after giving an opportunity of being heard to the assessee. He will also keep in view my observations in this order while making the assessment afresh."

9. Mr. Shrivastava, learned counsel has submitted that the order of the revisional authority is quite clear that he had directed for fresh assessment after affording opportunity to the assessee, and as it was in continuance, the directions given by the appellate authority paled into insignificance. It is noteworthy to state here after this order was passed, the proceeding was not initiated. It is not disputed by Shri Shrivastava that the Assessing Officer has not passed any order pursuant to the directions contained in the order passed by the Commissioner of Income Tax in exercise of powers u/s 263, but he has proceeded to pass the order in the year 1992 on the basis of the order passed by the appellate authority. The order passed by the Assessing Officer in 1992 was assailed in appeal before the Commissioner of Income Tax who confirmed the same on the ground that the order of the Assessing Officer has not been set aside and the order passed by the appellate authority stands and the order passed u/s 263 cannot be given effect to. The order passed in appeal on October 10, 1985, does not lose its force. The said order was challenged before the Tribunal and the Tribunal in paragraphs 4 and 5 expressed the views as under :

"We have heard the rival submissions of the parties and have carefully perused the orders of the authorities below and the documents filed by them. It is obvious from the order of the Commissioner of Income Tax passed u/s 263 of the Act and the show-cause notices issued to the assessee that the entire assessment order was not set aside. It is a settled position of law that for understanding the correct purport of the order for drawing a correct conclusion the order of any authority should be read in toto. It cannot be read piecemeal for drawing a different conclusion. In the entire order the Commissioner of Income Tax has discussed two issues which were considered by him to be erroneous and prejudicial to the interests of the Revenue and with respect of these issues, he has set aside the assessment order with the direction to make fresh assessment after making proper verification. He did not discuss the other issues discussed by the Assessing Officer in its assessment order. As such, we are of the view that the entire assessment order was not set aside.

5. We do not find any provision in the Act whereby a limitation is fixed for giving effect to the order of the appellate authorities. With regard to the allowability of the investment allowance the Commissioner of Income Tax (Appeals) has issued the direction to the Assessing Officer vide its order dated October 10, 1985, to allow the claim of the assessee much prior to the revisional order passed by the Commissioner of Income Tax u/s 263 of the Act. Since the assessment order with regard to the investment allowance has merged in the order of the Commissioner

of Income Tax (Appeals), the Commissioner of Income Tax has no jurisdiction to set aside the assessment order pertaining to this issue u/s 263 of the Act and the direction of the Commissioner of Income Tax (Appeals) with respect to this issue should also be complied with by the Assessing Officer and he has given effect to the direction of the Commissioner of Income Tax (Appeals) vide its order dated July 17, 1992, u/s 250 of the Act. After careful perusal of the record, we find that the direction of the Commissioner of Income Tax (Appeals) is duly complied with by giving effect to u/s 250 of the Act by the Assessing Officer. After careful perusal of the order of the Commissioner of Income Tax (Appeals), we are of the view that the Commissioner of Income Tax (Appeals) has properly adjudicated this issue and we do not find any reason to take a different view. Accordingly, we confirm the order of the Commissioner of Income Tax (Appeals)."

10. It is not in dispute that the assessee preferred an application u/s 256(1), which stood rejected. The crux of the matter is whether by virtue of the order passed by the Commissioner of Income Tax (Appeals) in revision, the order of assessment is nullified in entirety. We have scanned both the orders. It is not disputed by Mr. Shrivastava that the investment allowance was the subject-matter of revision before the Commissioner. In view of this, we are of the considered opinion that by virtue of the order passed by the Commissioner of Income Tax, the order of assessment was not totally put to naught or stood cancelled. It was not an order which nullified the order of assessment in totality. Certain directions were given therein. It is not disputed by Mr. Rohit Arya that the order passed in Section 263 could not have been given effect to as the period of limitation had already crept in. We appreciate the aforesaid submission. Once we have held that the order of assessment had not been nullified, the direction remains intact as per the order of the appellate authority. The question that falls for consideration is whether the same can be given effect to. In this context, we may refer to Sub-section (3)(ii) of Section 153 :

"(ii) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under Sections 250, 254, 260, 262, 263 or 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act;"

11. On a bare reading of this provision, it is crystal clear that if any aspect is within the scope and ambit of Sub-section (2A), there is no limitation. As we have held that the assessment order remains as it is and there was an order passed by the appellate authority also which remained as it is, being undisturbed by the order passed u/s 263, the bar of limitation would not come into effect. Hence, we are of the considered view that no question of law arises for calling for statement of the case.

Accordingly the ITR stands dismissed.