(1988) 01 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 201 of 1985

M.P. State Mining Corporation — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 07-01-1988

Acts Referred:
Income Tax Act, 1961 — Section 144B

Citation : (1988) 170 ITR 459

Hon'ble Judges : N.D. Oza, C.J;K.K. Adhikari, J

Bench : Division Bench

Advocate : B.L. Nema, for the Appellant; B.K. Rawat, for the Respondent

Judgement

N.D. Ojha, C.J.—The Income Tax Appellate Tribunal, Indore Bench Indore, has referred the following question to this court for its opinion u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the reference made by the Income Tax Officer to the Inspecting Assistant Commissioner u/s 144B was valid and the assessment made by the Income Tax Officer on April 23, 1979, was within the period of limitation ?"

2. The facts in brief necessary to answer the aforesaid question are that even though proceedings for the assessment year 1978-79 (sic) against the assessee should have been completed by March 31, 1979, they were actually completed by the Income Tax Officer on April 23, 1979, after a reference to the Inspecting Assistant Commissioner u/s 144B of the Act. It has not been disputed that if the reference u/s 144B of the Act was proper, then the assessment, as made on April 23, 1979, would be within limitation. What has, however, been urged is that the addition made to the income of the assessee by the Income Tax Officer was actually less than Rs. one lakh, but was erroneously shown to be more than that figure and, consequently, the reference itself was not proper. This being so, the assessment made on April 23, 1979, was barred by time. The plea raised in this

behalf on behalf of the assessee, however, did not find favour with the Tribunal in its second appellate order. The Tribunal has accepted the case of the Department that the Income Tax Officer, while preparing the draft, had made a bona fide mistake in calculation.

3. Having heard learned counsel for the parties, we are of the opinion that the aforesaid finding recorded by the Tribunal is essentially a finding of fact and on that finding, it cannot be said that the reference made u/s 144B of the Act by the Income Tax Officer was improper. We accordingly find no good ground for holding that the finding of the Tribunal that the assessment was not barred by time is invalid.

4. In the result, our answer to the question referred to us is that, on the facts and in the circumstances of the case, the Tribunal was right in holding that the reference made by the Income Tax Officer to the Inspecting Assistant Commissioner u/s 144B was valid and the assessment made by the Income Tax Officer on April 23, 1979, was within the period of limitation. In other words, the question referred to us is answered in the affirmative, in favour of the Department and against the assessee. There shall, however, be no order as to costs.

