(2001) 04 KAR CK 0061

In the Karnataka High Court

Case No : W.T.A. No''s. 1-9 and 10-17 of 2001

Munibyrappa APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 09-04-2001

Acts Referred:

Citation : (2004) 265 ITR 560 : (2001) 119 TAXMAN 204

Hon'ble Judges : R. Gururajan, J;M.F. Saldanha, J

Bench : Division Bench

Advocate : B. Bhavani Shankar Rao, for the Appellant; E.R. Indrakumar, for the Respondent

Judgement

M.F. Saldanha, J.—In these group of appeals, after hearing the appellant''s learned counsel for some time, we had issued notice to learned standing counsel who represents the Department. On that occasion on March 29, 2001, we had passed a speaking order which is reproduced below :

"We have heard the appellant''s learned counsel. He has, inter alia, raised a serious grievance with regard to the manner in which the Tribunal has disposed of these cases. Insofar as it is his contention that where legal issues of some consequence are canvassed and this is done on the basis of reported judgments, that it is not permissible for any forum to summarily disregard everything that has been argued. Learned counsel''s submission is that this creates a serious handicap for both the parties, namely, the assessee and the department, insofar as whoever is aggrieved, will be faced with a difficulty when the case goes to the higher forum, if there is not even a reference to what was argued before the Tribunal. We have not referred to the two salient points that fall for determination in these group of appeals. We have directed the appellant''s learned counsel to give notice and the learned advocate Sri E. R. Indrakumar, standing counsel for the Department, on our directions to take notice for the Department A copy of the proceedings to be handed over to him. Since we have heard the appeals for some time, we direct the office to re-list the same again on

Monday, i.e., on April 2, 2001, because in our view, these group of appeals require to be disposed of with certain directions.

To be relisted for this purpose on April 2, 2001."

2. Today, learned standing counsel, Mr. E. R. Indrakumar, submitted that he is in a position to defend the orders on the merits, but we have declined to go into that aspect for only one reason, namely, that we have pointed out to learned counsel that we do not approve of the quality of order that has been passed by the Tribunal and the cavalier manner in which the Tribunal has glossed over important issues such as matters concerning the nine Supreme Court judgments that were cited, in a one sentence statement that these judgments are distinguishable. Even assuming that the judgments are either not applicable or distinguishable, it is a well-defined procedure that applies to all judicial forums that it is essential to record which the judgments in question are or a brief summary of the contentions raised and to record the findings thereon. It is not permissible to merely brush aside important legal issues or to disregard them as it will become impossible for the next higher authority to be able to decipher as to what is the ground on which the Tribunal rejected a particular contention. We have further brought it to the notice of learned counsel that such a wrong practice is being followed by the Tribunal repeatedly and that is an additional reason why we insist on corrective action.

3. Without saying a single word with regard to the merits of the case, we set aside the impugned orders and remand the proceedings to the Tribunal with a direction that fresh notice be issued to the appellants, that they be heard and that orders on the merits as required by law be passed.

4. The appeals, accordingly, succeed to this extent and stand disposed of. No order as to costs.

5. The learned GA who represents the respondent-Department to file his memo of appearance in all the appeals within two weeks.