(1988) 09 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 126 of 1987

Nathulal (Decd. through Omprakash) APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 22-09-1988

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 171, 256(2), 263

Citation : (1988) 73 CTR 198 : (1989) 176 ITR 249

Hon'ble Judges : G.G.Sohani, Acting C.J.;K.M. Agrawal, J

Bench : Division Bench

Advocate : G.M. Chaphekar, for the Appellant; R.C. Mukati, for the Respondent

Judgement

G.G. Sohani, Actg. C.J.

1. This is an application u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. The material facts giving rise to this application, briefly, are as follows : Nathulal Hiralal was assessed in the status of an individual up to the assessment year 1980-81. In the accounting year 1979-80, the assessee and his adopted son effected a partition of the joint family property. Before Nathulal could file a return for the assessment year 1981-82, he expired on April 9, 1981, and his son, Omprakash, filed a return for the assessment year 1981-82 in the status of Hindu undivided family and also claimed recognition of the complete partition alleged to have taken place on November 7, 1980. The Income Tax Officer, after making necessary enquiry, passed an order of assessment u/s 143(3) of the Act in the status of the assessee as Hindu undivided family. The Income Tax Officer also passed a separate order u/s 171 of the Act recognising complete partition of the Hindu undivided family. The Commissioner of Income Tax, exercising powers of revision u/s 263 of the Act, issued a notice to the applicant calling upon him to show cause why the order passed by the Income Tax Officer u/s 171 of the Act should not be set aside as being prejudicial to the interests of the Revenue. The

applicant showed cause, but the Commissioner, by the order dated September 21, 1984, set aside the order passed by the Income Tax Officer u/s 171 of the Act and directed him to pass a fresh order after making an enquiry as to whether the status claimed for the first time for the assessment year 1981-82 was correctly claimed as Hindu undivided family. Aggrieved by the order passed by the Commissioner, the applicant preferred an appeal before the Tribunal. That appeal was, however, dismissed. Aggrieved by the order passed by the Tribunal, the applicant sought reference, but as the application made in that behalf was rejected, the applicant has made this application.

3. Having heard learned counsel for the parties, we have come to the conclusion that the following questions of law do arise out of the order passed by the Tribunal :

"(i) Whether, on the facts and. in the circumstances of the case, the Tribunal was justified in upholding the order passed by the Commissioner of Income Tax u/s 263 of the Act setting aside the order passed by the Income Tax Officer u/s 171 of the Act and directing him to make enquiry regarding change of the status from individual to Hindu undivided family when the order u/s 143(3) of the Act had not been cancelled ?

(ii) Whether, on the facts and in the circumstances of the case, the Commissioner had jurisdiction u/s 263 of the Act to set aside an order passed by the Income Tax Officer u/s 171 of the Act recognising partition after making enquiry in that behalf ?"

4. The application is, therefore, allowed. The Tribunal is directed to state the case and to refer the aforesaid questions of law to this court for its opinion. In the circumstances of the case, parties shall bear their own costs of this reference.

