(1989) 03 MP CK 0028

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 3 of 1987

Prabhudayal Amichand — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 08-03-1989

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 271(1), 274

Citation : (1989) 180 ITR 84 : (1989) 44 TAXMAN 213

Hon'ble Judges : G.G. Sohani, Acting C.J.;R.K. Verma, J

Bench : Division Bench

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

Judgement

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

1. By this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in setting aside the order dated March 31, 1980, passed by the Income Tax Officer u/s 271(1)(c) of the Income Tax Act, 1961, and directing him to pass a fresh order in accordance with law instead of upholding its cancellation ?"

2. The material facts giving rise to this reference, briefly, are as follows :

During the course of the assessment proceedings for the assessment year 1973-74, the Income Tax Officer noticed that the assessee had furnished inadequate particulars of its income. The Income Tax Officer, therefore, initiated proceedings aganst the assessee u/s 271(1)(c) of the Act and a notice u/s 274 of the Act was served on the assessee. The Income Tax Officer, after recording his satisfaction that the assessee had concealed income to the extent of Rs. 45,245, levied penalty u/s 271(1)(c) of the Act. Aggrieved by the order passed by the Income Tax Officer, the assessee preferred an appeal before the Commissioner of

Income Tax (Appeals). It was contended on behalf of the assessee that the order passed by the Income Tax Officer deserved to be quashed as no approval of the Inspecting Assistant Commissioner, as required by the proviso to Clause (iii) of Section 271(1) of the Act, was obtained by the Income Tax Officer and no opportunity of hearing was given to the assessee. The Commissioner of Income Tax (Appeals) upheld these contentions and quashed the order passed by the Income Tax Officer. Aggrieved by the order passed by the Commissioner of Income Tax (Appeals), the Revenue preferred an appeal before the Tribunal. The Tribunal held that the Commissioner of Income Tax (Appeals), instead of quashing the order passed by the Income Tax Officer, imposing penalty, should have remitted the matter to the Income Tax Officer for passing a fresh order in accordance with law. In this view of the matter, the Tribunal allowed the appeal and directed the Income Tax Officer to pass an order afresh in accordance with law. Aggrieved by the order of the Tribunal, the assessee sought reference and it is at the instance of the assessee that the aforesaid question of law has been referred to this court for its opinion.

3. Having heard learned counsel for the parties, we have come to the conclusion that this reference must be answered in the affirmative and against the assessee. The Tribunal, in our opinion, has rightly held, relying upon the decision of this court in Kimtee Vs. Commissioner of Income Tax, that a procedural irregularity not involving the question of jurisdiction can be cured.

4. Our answer to the question referred to this court is, therefore, in the affirmative and against the assessee. In the circumstances of the case, parties shall bear their own costs of this reference.

