(1988) 03 MP CK 0019

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 203 of 1983

V. C. GUPTA APPELLANT

Vs

COMMISSIONER OF Income Tax. RESPONDENT

Date of Decision : 02-03-1988

Acts Referred:
Income Tax Act, 1961 — Section 144B, 256(1)

Citation : (1988) 74 CTR 136 : (1988) 174 ITR 513

Hon'ble Judges : G. G. Sohani, Acting C.J.

Bench : Division Bench

Judgement

G. G. SOHANI, ACTG. C.J. - 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 questions of law to this court for its opinion :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in its finding that the Income Tax Officer rightly invoked the provisions of section 144B of the Income Tax Act, 1961 ?

(2) And if the answer to question No. (1) above is in the negative, whether the assessment order is passed after the expiry of the period of limitation making it void ab initio and liable to be annulled ?"

The material facts giving rise to this reference, briefly, are as follows : The assessee is a Hindu undivided family and the assessment year in question is 1975-76. The assessee filed a return on September 30, 1977. The Income Tax Officer forwarded a draft order for the approval of the Inspecting Assistant Commissioner u/s 144B of the Act on August 28, 1978, together with the objections submitted by the assessee. In accordance with the directions of the Inspecting Assistant Commissioner, the assessment order was passed by the Income Tax Officer on February 19, 1979. Aggrieved by the order passed by the Income Tax Officer, the assessee preferred an appeal before the Commissioner of

Income Tax (Appeals) who dismissed the appeal. On further appeal before the Tribunal the assessee was allowed to raise the following ground of appeal.

"That the assessment is void ab initio because the variation in the income/loss proposed in the draft order, did not exceed Rs. one lakh and, therefore, the provisions of section 144B were not attracted and, consequently, the date of completion of assessment could not fall beyond September 29, 1978 (the return being filed on September 30, 1977)."

While dealing with the aforesaid ground, the Tribunal observed as follows :

"In our view, the pleas put forth by the learned counsel for the assessee are devoid of any force. As a matter of fact, in the return itself, the assessee declared a minus income at Rs. 1,35,002 and in the proposed draft assessment order u/s 144B of the Act, the income estimated comes to Rs. 1,50,830. Thus, the apparent variation in the income comes to about more than Rs. 2.5 lakhs. As such, this very fact goes to indicate that there is on infirmity in the order passed by the Income Tax Officer as it is perfectly within time and the Income Tax Officer rightly invoked the provisions of section 144B of the Act. Hence, the ground raised is rejected."

Aggrieved by the order passed by the Tribunal, the assessee sought reference and it is at the instance of the assessee that the aforesaid questions of law have been referred to this court for its opinion.

Having heard learned counsel for the parties, we have come to the conclusion that the Tribunal was right in holding that there was no infirmity in the order passed by the Income Tax Officer and that the provisions of section 144B of the Act were rightly invoked. The contention urged on behalf of the assessee that for invoking the provisions of section 144B of the Act, the variation in the individual heads of income should exceed rupees one lakh is devoid of merit. In order to attract the provisions of section 144B of the Act, all that was necessary in the instant case was that the amount of variation in the income or loss returned should have exceeded rupees one lakh. That condition having been satisfied, the provisions of section 144B of the Act were rightly held to be applicable.

Our answer to question No. (1) referred by the Tribunal is, therefore, in the affirmative and against the assessee. In this view of the matter, question No. (2) does not arise and it is, therefore, not necessary to answer that question. In the circumstances of the case, parties shall bear their own costs of the reference.