(2004) 08 MP CK 0053

In the Madhya Pradesh High Court

Case No : IT Appeal No. 6 of 2002

Vikaschand Mansingka APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 18-08-2004

Acts Referred:
Income Tax Act, 1961 — Section 254(1)

Citation : (2004) 191 CTR 259 : (2005) 142 TAXMAN 564

Hon'ble Judges : Ashok Kumar Tiwari, J;A.M. Sapre, J

Bench : Division Bench

Advocate : G.M. Chafekar and S.K. Jain, for the Appellant; R.L. Jain, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.—This is an appeal filed by an assessee u/s 260A of the IT Act against an order dt. 30th Aug., 2001, passed by Tribunal, Indore, in MA No. 64/Ind/2000. It was admitted for final hearing on following substantial questions of law :

"1. Whether Tribunal was justified in not affording an opportunity to an assessee and/or to a counsel to argue an appeal on merits ?

2. Whether Tribunal was justified in deciding the appeal on merits despite counsel seeking an adjournment on the ground of no notice of hearing of the appeal ?"

2. Heard Shri G.M. Chafekar, learned senior counsel with Shri S.K. Jain, counsel for appellant, and Shri R.L. Jain, learned counsel for respondent.

3. Indeed, in view of the nature of two substantial questions of law framed by this Court, we do not consider it necessary to go into the merits and demerits of the issue raised in an appeal which was decided by the Tribunal against an assessee. The only question that arises for consideration in this appeal is,

whether in the facts and circumstances of the case, Tribunal was fully justified in proceeding to decide the appeal on merits ?

4. We would be failing in our duty if we do not take note of the subtle observations made by the Supreme Court in one of the most coveted decision of Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, . Vivian Bose--an eminent Judge, speaking for the Bench made the following memorable observations in his inimitable style of writing. How eloquent and far-reaching these observations are :

"A Code of procedure must be regarded as such. It is procedure something designed to facilitate justice and further its ends : not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leave no room for reasonable elasticity of interpretation should, therefore, be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it. Our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, the decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle."

5. Indeed the aforementioned observations must always be kept in mind by every Judge who has been invested with the power to decide the rights of a citizen in each case.

6. When we perused the impugned appellate order of the Tribunal, we noticed that what the assessee''s counsel was asking for was a short adjournment on the ground that he had no notice of the appeal and/or that he had no file of the appeal to enable him to argue the case. According to counsel, since the appeal was transferred from Bombay Tribunal to Indore Tribunal, the notice of hearing of appeal should have been sent to assessee by Indore Tribunal before insisting upon him to argue the case on the strength of his so-called Vakalatnama filed much earlier.

7. In our considered opinion, the Tribunal ought not to have laboured hard in deciding the issue of adjournment and Vakalatnama of counsel in great detail as all this was avoidable and should have been avoided far from making mountain out of a mole hill. Instead, the issue could have been over by granting short adjournment of one or two days and then decided the appeal on merits after hearing the counsel for the assessee. It is always in the larger interest of institution to render substantial justice after affording an opportunity to the party aggrieved. It is much more so when the issue is decided against an aggrieved. It is always desirable to devote more time to write something good on merits of the

issue rather than to devote time and energy for something which is slightly de hors, the issue and can be avoided.

8. We, therefore, cannot countenance with the technical approach of the Tribunal while deciding the appeal on merits. At the same time, we are inclined to hold that the appeal being quite old and counsel having sought adjournments in past should have been ready to address the Hon''ble Members of the Bench when the Members requested the counsel to argue the case. The counsel being one of the senior counsel and having acquired expertise in the subject could have perused the file of the Court and addressed. It was the duty of the counsel when the Court requests him to argue, to assist the Court to the best of his ability, acumen and knowledge, rather than to avoid hearing on such flimsy grounds. It is much more so when the counsel is a senior one and not a freshener. Having argued, counsel could have sought permission to file written submission in a day or two.

9. Be that as it may, we allow the appeal and set aside the impugned order. We, however, impose a cost of Rs. 5,000 on assessee keeping in view the observations of Sangram Singh (supra). Let this cost be deposited with the concerned IT Department as a precondition of hearing of the appeal on merits. The Tribunal will then decide the appeal on merits within three months from the date of this order. Parties to appear before Tribunal on 8th Sept., 2004.