

(2004) 10 P&H CK 0051

High Court Of Punjab And Haryana At Chandigarh

Case No: Income-tax Reference No. 37 of 1997

Commissioner of
Income Tax

APPELLANT

Vs

Dr. M.C. Garg, Prop.,
Garg Eye and
Maternity Hospital

RESPONDENT

Date of Decision: Oct. 11, 2004

Acts Referred:

- Income Tax Act, 1961 - Section 132, 251

Citation: (2005) 193 CTR 275 : (2004) 271 ITR 264

Hon'ble Judges: G.S. Singhvi, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: Rajesh Bindal, for the Appellant; None, for the Respondent

Judgement

Ajay Kumar Mittal, J.

At the instance of the Revenue, the Income Tax Appellate Tribunal, Delhi Bench "D", Delhi (for short "the Tribunal"), has referred the following questions of law u/s 256(1) of the Income Tax Act, 1961 (for short "the Act"), for the opinion of this court :

"(1) Whether, on the facts and circumstances of the case, the hon"ble Tribunal was right in law to modify the direction of the learned Commissioner of Income Tax (Appeals) by holding that the addition in any case under this head should not exceed Rs. 49,091 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in restricting the power of the Commissioner of Income Tax (Appeals) for additions/enhancement or issuing such directions to the Assessing Officer ?"

2. The brief facts of the case necessary for answering the reference may be noticed. The assessee is an individual and proprietor of M/s. Garg Eye and Maternity

Hospital, Kaithal. The assessee's premises were searched u/s 132 of the Act on October 9, 1987, during which a diary and other records were seized. The diary revealed that certain expenditure which was recorded therein during the period between January 1 to March 5, 1987, was from undisclosed sources and accordingly, the Assessing Officer made an addition of Rs. 48,891 (wrongly mentioned as Rs. 49,091 in the original assessment). The assessee contested the said addition before the Commissioner of Income Tax (Appeals) and the Commissioner of Income Tax (Appeals) remanded the issue to the file of the Assessing Officer to decide afresh after giving due opportunity of being heard to the assessee. The Commissioner of Income Tax (Appeals) vide his order dated February 17, 1992, directed the Assessing Officer that in case he came to the conclusion that the sources of expenses remained unexplained, he will also consider similar expenses likely to have incurred by the assessee for the period not covered in the seized diary but covered for the assessment year in question. Aggrieved by the aforesaid directions of the Commissioner of Income Tax (Appeals), the assessee preferred an appeal to the Tribunal against the impugned order and the learned Tribunal modified the direction of the Commissioner of Income Tax (Appeals) that the addition in any case on this account should not exceed the addition originally made. It is against the said observation of the learned Tribunal that the reference has been made to this court at the instance of the Revenue for the opinion of this court.

3. We have heard Shri Rajesh Bindal, learned counsel for the Revenue, and with his assistance perused the paper book.

4. Shri Rajesh Bindal submitted that the Commissioner of Income Tax (Appeals) u/s 251 of the Act while exercising the appellate powers can confirm, reduce, enhance, annul or set aside an assessment and refer back the same to the Assessing Officer. The said powers are very vast and the restriction imposed by the Tribunal that the Assessing Officer shall not exceed the additions originally made, i.e., beyond Rs. 48,891 (wrongly mentioned as Rs. 49,091) is not based on legal principles. Learned counsel placed reliance on [S.R. Kalani Vs. Commissioner of Income Tax](#), ; [Commissioner of Income Tax Vs. Devichand Pan Mal](#), and [AMIN CHAND AND SONS Vs. COMMISSIONER OF Income Tax, AMRITSAR II.](#), .

5. Section 251 of the Act reads as under :

"251. (1) In disposing of an appeal, the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) shall have the following powers -

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment; or he may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment in accordance with the directions given by the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) and after making such further inquiry as may be necessary, and the Assessing Officer shall thereupon proceed to make such fresh assessment

and determine, where necessary, the amount of tax payable on the basis of such fresh assessment;

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty ;

(c) in any other case, he may pass such orders in the appeal as he thinks fit.

(2) The Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation.-In disposing of an appeal, the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) by the appellant."

6. A careful reading of the aforesaid provision would show that the Commissioner of Income Tax (Appeals) while adjudicating an appeal u/s 251 has wide powers and he can set aside an assessment and can remand the same for fresh decision by the Assessing Officer. While interpreting section 251, the Madhya Pradesh High Court in [S.R. Kalani Vs. Commissioner of Income Tax](#), held as under (page 169) :

"Sub-clause (a) of this section provides that in an appeal against an order of assessment the Appellate Assistant Commissioner may either confirm, reduce, enhance or annul the assessment. He may set aside the assessment and refer the case back to the Income Tax Officer for making a fresh assessment in accordance with the direction given by him. And it is significant that while conferring these powers u/s 251(l)(a) no limitation has been placed on the powers of the Appellate Assistant Commissioner subject to the right of appeal conferred on the assessee u/s 246. It, therefore, clearly indicates that the Appellate Assistant Commissioner while hearing an appeal is not bound by the limitations which are placed on an assessee while preferring an appeal u/s 246. And in this view of the matter, hearing an appeal in the present case if the Appellate Assistant Commissioner has set aside the assessment and directed an inquiry in respect of the status of the assessee and thereafter to proceed for a fresh assessment it could not be said that the Appellate Assistant Commissioner has gone beyond his jurisdiction which he is exercising u/s 251(l)(a) of the Act."

7. In [Commissioner of Income Tax Vs. Devichand Pan Mal](#), the Rajasthan High Court observed as under (page 555) :

"A perusal of section 251(1) shows that the powers of the Appellate Assistant Commissioner are wider than those of the ordinary appellate court under the Code of Civil Procedure. His competence is not restricted to dealing with the

subject-matter of appeal, he may examine all matters covered by the assessment order and correct the assessment in respect of all such matters even to the prejudice of the assessee and may remand the case to the Income Tax Officer for inquiring into items which were not the subject-matter of appeal. . . ."

8. This High Court in [AMIN CHAND AND SONS Vs. COMMISSIONER OF Income Tax, AMRITSAR II.](#), , made similar observations, which are reproduced as under (page 446) :

"It is obvious from the plain language of the aforesaid section that the Appellate Assistant Commissioner is not debarred from setting aside an order passed u/s 185(l)(b) and directing the Income Tax Officer to redecide the matter after taking into consideration some other relevant matters. The powers of the Appellate Assistant Commissioner are wider than those of an appellate court under the Code of Civil Procedure. His competence is not restricted to dealing with the subject matter of the appeal. He may remand the case to the Income Tax Officer for enquiring into the item which were not even the subject matter of an appeal. In our opinion, therefore, the Appellate Assistant Commissioner had the power to set aside the order of the Income Tax Officer u/s 185(l)(b) and restore the case to his file for fresh decision after examining the contention raised by Shri Sohan Lai that the assessee-firm had already stood dissolved with effect from February 1, 1967."

9. In [Commissioner of Income Tax, U.P., Lucknow Vs. Kanpur Coal Syndicate](#), , the Supreme Court laid down in very clear terms that the appellate authority has plenary powers while disposing of the appeal and that this power is co-terminous with that of the Income Tax Officer. While commenting on the powers of the Appellate Assistant Commissioner u/s 31 of the Act (now section 251), it was observed by the Supreme Court as under (page 229) :

"If an appeal lies, section 31 of the Act describes the powers of the Appellate Assistant Commissioner in such an appeal. u/s 31(3)(a) in disposing of such an appeal the Appellate Assistant Commissioner may, in the case of1 an order of assessment, confirm, reduce, enhance or annul the assessment, under clause (b) thereof he may set aside the assessment and direct the Income Tax Officer to make a fresh assessment. The Appellate Assistant Commissioner has, therefore, plenary powers in disposing of an appeal. The scope of his power is conterminous with that of the Income Tax Officer. He can do what the Income Tax Officer can do and also direct him to do what he has failed to do., If the Income Tax Officer has the option to assess one or other of the entities in the alternative, the Appellate Assistant Commissioner can direct him to do what he should have done in the circumstances of a case .. ."

10. In view of the consistent interpretation of section 251 by various High Courts and the law laid down by the Supreme Court, we hold that the Tribunal was in error while giving a direction that the Assessing Officer shall not make an addition

exceeding Rs. 48,891 (wrongly mentioned as Rs. 49,091).

11. In the result, the questions of law referred by the Tribunal as reproduced above are answered in favour of the Revenue and against the assessee.