

(1994) 01 AHC CK 0041

Allahabad High Court

Case No: Income-tax Application No"s. 281 and 282 of 1992

Commissioner of Income Tax

APPELLANT

Vs

Smt. Prakashwati

RESPONDENT

Date of Decision: Jan. 10, 1994**Acts Referred:**

- Income Tax Act, 1961 - Section 143, 143(1), 256, 263

Citation: (1995) 124 CTR 83 : (1994) 210 ITR 567**Hon'ble Judges:** S.C. Verma, J; R.K. Gulati, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

R.K. Gulati, J.

These are two connected applications u/s 256(2) of the Income Tax Act, 1961 (for short, "the Act") filed at the instance of the Revenue against a common order passed by the Income Tax Appellate Tribunal in respect of the assessment years 1984-85 and 1985-86. A common question proposed in these applications is as under :

"Whether, in the circumstances of the case, the Income Tax Appellate Tribunal was legally correct to cancel the order of the Commissioner of Income Tax passed u/s 263 of the Income Tax Act ?"

2. The assessments in respect of the above two years were completed u/s 143(1) of the Act under the "summary assessment scheme" on income of Rs. 15,280 and Rs. 17,180, respectively. In respect of the assessment year 1984-85, the assessee was subjected to tax of Rs. 80 while in respect of the other year a tax of Rs. 475 was imposed. The Commissioner of Income Tax, Meerut, by a common order passed u/s 263 of the Act set aside the assessments for making the same de novo after making proper enquiries. The Commissioner was of the opinion that the impugned assessment orders were erroneous and prejudicial to the interests of the Revenue, inasmuch as, the Income Tax Officer had completed the assessments without

making "proper enquiries". On appeal, the order passed by the Commissioner of Income Tax did not find favour with the Income Tax Appellate Tribunal.

3. Having heard learned counsel for the parties, we are of the opinion that the order of the Income Tax Appellate Tribunal does not give rise to any stateable question of law.

4. In setting aside the order of the Commissioner of Income Tax, the Income Tax Appellate Tribunal in the first instance held that in view of the Departmental instructions contained in the Board's Circulars Nos. 4 dated July 8, 1986, and 176 dated August 26, 1987, the assessment completed u/s 143(1) could not be subjected to any action u/s 263 of the Act which, inter alia, provided that no remedial action is necessary for summary assessments in the cases as the revenue loss, if any, is consciously suffered by the Government in utilising resources for scrutiny and investigation of larger cases. The Income Tax Appellate Tribunal held that the circulars of the Board being benevolent in nature, it is settled, were binding on the tax authorities including the Commissioner of Income Tax.

5. That apart, the Income Tax Appellate Tribunal also examined the impugned order of the Commissioner of Income Tax on the merits and found that it was not sustainable on consideration of the material that existed on the record. In doing so, it recorded a finding that the enquiry contemplated by the Commissioner in his order setting aside the assessment orders had already been made by the Income Tax Officer when he completed the wealth-tax assessment for the year 1980-81. These findings of fact recorded by the Income Tax Appellate Tribunal have not been questioned by the Revenue in the question proposed in these two applications. It is thus evident that the order of the Income Tax Appellate Tribunal rested on an appreciation of the facts and material available on the record.

6. There is another aspect of the matter. We have seen earlier that in these two cases the tax effect involved is very nominal, that is, Rs. 80 for the assessment year 1984-85 and Rs. 475 for the assessment year 1985-86. In [Commissioner of Wealth Tax Vs. Executors of Late D.T. Udeshi](#), a Division Bench of the Bombay High Court rejected an application for reference where the tax effect was less than Rs. 8,500 in a year saying that no reference application could be made in view of the policy decision of the Central Board of Direct Taxes not to file references in the cases where the tax effect was less than Rs. 30,000 per year, contained in its Circular F. No. 279/26 of 1983-ITJ, dated July 12, 1984, and Circular F. No. 319/11 of 1987-WT dated July 14, 1987. For that reason also, these two applications are liable to be rejected.

7. In the result, these applications are without any merit and are accordingly rejected. There shall be no order as to costs.