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Commissioner of Income Tax Vs Smt. Prakashwati

Income-tax Application No''s. 281 and 282 of 1992

Court: Allahabad High Court

Date of Decision: Jan. 10, 1994

Acts Referred:
Income Tax Act, 1961 â€" 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.