
(1996) 89 TAXMAN 365

Gauhati High Court

Case No: IT Reference No. 63 of 1990

Assam State Text Book
Production and
Publication Corpn. Ltd.

APPELLANT

Vs

Commissioner of
Income Tax

RESPONDENT

Date of Decision: June 3, 1996

Acts Referred:

Income Tax Act, 1961 " Section 10(22), 143(3), 148, 256(1), 256(2)

Citation: (1996) 89 TAXMAN 365

Hon'ble Judges: S.B. Roy, J; D.N. Baruah, J

Bench: Division Bench

Advocate: K.H. Choudhury, for the Appellant; G.K. Joshi and U. Bhuyan, for the Respondent

Judgement

Baruah, J.

In this reference u/s 256(1) of the income tax Act, 1961 ("the Act"), the following question has been referred by the Tribunal

for opinion of this Court:

Whether, on the facts and in the circumstances of the case, the Tribunal is correct in holding that the claim of exemption u/s 10(22) of the income

tax Act, 1961 is a point of fact ?

For the purpose of answering the question the facts may be stated as follows :

For the assessment year 1979-80, the Assessing Officer assessed u/s 143(3)/148. Return was filed showing income of Rs. 18,33,520 which was

assessed at Rs. 31,62,554. There was no discussion in the assessment order about the claim of the assessee for exemption of the income u/s

10(22) of the Act. The assessee took up the matter before the Commissioner (Appeals) and the Commissioner of income tax (A) also dismissed

the appeal. Thereafter, the assessee preferred an appeal before the Tribunal raising various grounds on different items of addition or disallowances.

The Tribunal disposed of the appeal by order dated 27-7-1989. Thereafter, the assessee filed an application before the Tribunal stating that there

was some mistake in the order of the Tribunal. Amongst other things, it was submitted that the main issue regarding the claim of assessee for

exemption u/s 10(22) as per amended ground had not been dealt with by the Tribunal. The Tribunal partly allowed the appeal with the observation

that the Tribunal had no jurisdiction to entertain such point, which had not been raised before the authorities below. The assessee thereafter

submitted an application to refer the following questions for opinion of this Court:

1. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in holding that the claim of exemption u/s 10(22) of the

income tax Act, 1961 is a point of fact ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in holding that the Tribunal has no jurisdiction to entertain a

new point of law, i.e., the claim of exemption u/s 10(22), as this point had not been raised before the authorities below ?

However, the Tribunal referred only the question referred to in paragraph 1 of this judgment. Hence the present reference.

2. We have heard Mr. K.H. Choudhury, counsel appearing for the assessee/applicant and Mr. G.K. Joshi, standing counsel for the

revenue/respondent. In this case, we have to see whether the question referred by the Tribunal can be answered or not. The Tribunal in its order

dated 12-2-1990 passed in Misc. Petition No. 23 (Gauhati) of 1989 observed thus :

We have heard both the sides and we have gone through the orders of the authorities below for our consideration. It is seen that this point is not

arising out of the order of the CIT(A) impugned before the Appellate Tribunal. Actually, certain facts would have to be basically found and

materials brought on record before this point can be taken up. In this view of the matter, we are of the opinion that since the Appellate Tribunal

would have no jurisdiction to entertain such point of fact, which had not been raised before the authorities below, this point of the assessee cannot

be accepted. It is open to the assessee to take up the matter before the CIT(A), if such ground has been raised before the CIT(A) originally, for

taking appropriate action.

3. We have perused the orders passed by the Tribunal as well as the question referred to this Court for opinion. In this connection, reference can

be made to a decision in Commissioner of Income Tax, Bombay Vs. Scindia Steam Navigation Co. Ltd., . In the said decision, the Apex Court

held that the High Court can answer the question u/s 256(1) or 256(2) only on the following conditions:

(1) When a question is raised before the Tribunal and is dealt with by it, it is clearly one arising out of its order.

(2) When a question of law is raised before the Tribunal but the Tribunal fails to deal with it, it must be deemed to have been dealt with by it, and

is, therefore, one arising out of its order.

(3) When a question is not raised before the Tribunal but the Tribunal deals with it, that will also be a question arising out of its order.

(4) When a question of law is neither raised before the Tribunal nor considered by it, it will not be a question arising out of its order

notwithstanding that it may arise on the findings given by it." (p. 611)

From the decision in CIT v. Scindia Steam Navigation Co. Ltd. (supra), it is abundantly clear that this Court cannot answer the question if it does

not arise out of the order passed by the Tribunal in the manner quoted above.

4. Similarly, in Commissioner of Income Tax, West Bengal, Calcutta Vs. Smt. Anusuya Devi, , the Apex Court held that High Court may only

answer a question referred to it by the Tribunal. The High Court is, however, not bound to answer a question merely because it is raised and

referred. It is well-settled that the High Court may decline to answer a question of fact or a question of law which is purely academic or has no

bearing on the dispute between the parties or though referred by the Tribunal does not arise out of its order. The High Court may also decline to

answer a question arising out of the order of the Tribunal, if it is unnecessary or irrelevant or is not calculated to dispose of the real issue between

the taxpayer and the department. There is also no ground for restricting that power when by an erroneous order the High Court has directed the

Tribunal to state a case on a question which does not arise out of the order of the Tribunal. Even in case when the High Court gives direction to the

Tribunal to refer question(s), the High Court is not bound to answer the question without considering whether it arises out of the order of the

Tribunal, whether it is a question of law, or whether it is academic, unnecessary or irrelevant.

5. On going through the question referred to us, we do not find that the said question is arising out of the order passed by the Tribunal. Besides, the

question has no bearing on the dispute between the parties. Accordingly, we decline to answer the question referred to us.

6. In the facts and circumstances of the case, there will be no order as to costs.

Roy, J.

I agree.