
(2000) 02 GUJ CK 0084

Gujarat High Court

Case No: Special Civil Application No. 6688 of 1993

Pravin

APPELLANT

Vs

Ashar Vs Jaidev,
Commissioner of
Income Tax

RESPONDENT

Date of Decision: Feb. 17, 2000

Acts Referred:

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1961 - Section 143(3), 264

Citation: (2001) 165 CTR 610 : (2001) 247 ITR 828

Hon'ble Judges: J.N. Bhatt, J; C.K. Buch, J

Bench: Division Bench

Advocate: S.N. Soparkar, for the Appellant; Akhil Kureshi and M.R. Bhatt, for the Respondent

Judgement

J.N. Bhatt, J.

The short but interesting question which has surfaced in this petition under Article 226 of the Constitution of India is as to whether the impugned order of respondent No. 1, u/s 264 of the Income Tax Act, 1961 (the "I. T. Act"), dated March 26, 1992, in respect of the assessment years 1975-76 to 1981-82 (7 years), whereby the revision application of the petitioner-assessee came to be rejected on the ground that it was barred by limitation, is legal, valid or justified or not ?

2. The petitioner-assessee was working as a Development Officer for the Life Insurance Corporation of India and was in receipt of the incentive bonus, partly, in order to reimburse the expenditure required to be incurred for procuring business. He raised this issue, for the first time, in the assessment year 1982-83, contending that since part of the incentive bonus received is required to be spent for procuring business, part of the incentive bonus should be exempted under the provisions of the Income Tax Act. The contention was accepted by the Assistant Commissioner of Income Tax, Jamnagar,

whereby he held that the petitioner is entitled to deduction at 40 per cent, of the incentive bonus as expenses. The Income Tax Appellate Tribunal, later on, confirmed it.

3. Prompted by this, the petitioner-assessee filed revision application on January 20, 1984, before the respondent for the assessment years 1975-76 to 1981-82, against the orders u/s 143(3) passed by the Income Tax Officer, claiming the part of the incentive bonus as permissible expenditure. Since there was a delay, as the revision was for the past seven years' assessments, the assessee, inter alia, contended that the order of the first appellate authority for the assessment year 1982-83 came (to be recorded on December 22, 1983, and within a period of one month, the revision came to be filed on January 20, 1984, for the entire block of seven years by invoking the aid of the provisions of Section 264 of the Income Tax Act. It is on this ground, the delay was sought to be condoned.

4. The respondent, Commissioner of Income Tax, did not find favour with the claim for condonation of delay holding that the decision of the appellate authority for the assessment year 1982-83 in favour of the assessee would not give rise to a right to the assessee to have filed a belated revision application for seven years and to claim certain deductions for the incentive bonus given by the Life Insurance Corporation. According to him, each assessment year is separate and independent proceedings and each claim has to be taken up within the appropriate time frame. He, therefore, held that the assessee was not prevented from making a revision application within the stipulated period, and, therefore, the revision came to be dismissed on the technical ground of barred by limitation.

5. After having heard the learned advocates appearing for the parties and considering the facts emerging from the record of the present case, it is clear that the respondent, Commissioner of Income Tax, while determining and deciding the revision u/s 264 of the Income Tax Act had not given an opportunity of hearing. This aspect itself is sufficient to direct respondent No. 1 to rehear the revision filed by the assessee and to decide it in accordance with law after giving an opportunity of hearing to the petitioner. Obviously, the matter is also not decided on the merits. It came to be decided only on the ground of limitation. Since non-hearing of the assessee by the authority strikes at the root of the impugned order, we are left with no alternative but to quash the impugned order. The impugned order is, therefore, required to be quashed. The impugned order dated March 26, 1992, as at annexure A, is quashed and set aside. Obviously, the matter shall go back to him for reconsideration, adjudication and determination, after affording the assessee with an opportunity of hearing. The respondent authority, obviously, shall have to consider the merits of the claims made in the revision in the light of the decision of this court rendered in [Commissioner of Income Tax Vs. Kiranbhai H. Shelat and Others](#), and objectively, in accordance with law.

6. In the result, the petition is partly allowed, in the light of the aforesaid observations and directions, leaving the parties to bear their own costs.