Commissioner of Income Tax Vs Agha Abdul Jabbar Khan

Court: Madhya Pradesh High Court

Date of Decision: June 23, 1990

Acts Referred: Income Tax Act, 1961 â€" Section 147, 153, 153(3), 250

Citation: (1991) 187 ITR 587

Hon'ble Judges: S.K. Jha, C.J; K.M. Agarwal, J

Bench: Division Bench

Advocate: B.K. Rawat, for the Appellant; G.M. Purohit, for the Respondent

Judgement

K.M. Agarwal, J.
This is a reference u/s 256(1) of the Income Tax Act, 1961 (in short, the ""Act""), at the instance of the Department. The

Tribunal has referred the following question of law to this court for its opinion :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the direction given by the Appellate

Assistant Commissioner was wholly unwarranted and redundant ?

2. Initially the assessment of the assessee for the assessment year 1964-65 was made on September 6, 1968, on a total income of Rs. 59,380

which included the amount of Rs. 30,972 representing the income derived from capital gain on acquisition of certain land by the Government and

from sale of certain house. The compensation for the acquired land was subsequently enhanced by the District Judge at the instance of the assessee

which was upheld in appeal by the High Court. The Income Tax Officer, thereafter, initiated proceedings u/s 140A, (sic) read with Section 147(a)

of the Act. The Income Tax Officer made an addition of Rs. 16,161 in the income of the assessee by holding that the original capital gains

computed at Rs. 13,472 stood enhanced to Rs. 29,618 as a result of the decision of the High Court. Being aggrieved, the assessee preferred

appeal before the Appellate Assistant Commissioner of Income Tax, who was pleased to allow the appeal by holding that no case for reopening

the assessment u/s 147(a) was made out, because there was no failure on the part of the assessee to disclose any particulars of his income which

might have resulted in escapement of tax. At the same time, the Appellate Assistant Commissioner was further pleased to make a direction to the

Income Tax Officer to recompute the amount of capital gains of the assessee in accordance with Section 153(3)(ii) of the Act. Being aggrieved by

the Appellate Assistant Commissioner''s direction to the Income Tax Officer for recomputation of the amount of capital gains, the assessee

preferred appeal before the Tribunal which was allowed by holding that the direction given by the Appellate Assistant Commissioner was wholly

unwarranted and redundant. Aggrieved by the order of the Tribunal, the Revenue applied for a reference u/s 256(1) of the Act. The application

was allowed and the aforesaid question of law was referred to this court for its decision by the Tribunal.

3. Having heard learned counsel for the parties, we are of the view that the aforesaid question of law deserves to be decided in favour of the

assessee and against the Revenue. In the appeal preferred by the assessee before the Appellate Assistant Commissioner, the only question that

required decision was whether, in the facts and circumstances of the case, the Income Tax Officer had jurisdiction to reopen the assessment u/s

147(a) of the Act. Once the Appellate Assistant Commissioner came to the conclusion that the Income Tax Officer had no jurisdiction to reopen

the case u/s 147(a) of the Act and the order of reassessment was liable to be quashed, he had no jurisdiction to make any further direction for

recomputing the amount of capital gains, because as held by the Supreme Court in Rajinder Nath and Others Vs. Commissioner of Income Tax ,

Delhi, such direction was not necessary for the disposal of the appeal before the Appellate Assistant Commissioner. The Supreme Court pointed

out (at p. 18) :

The expressions ''finding'' and ''direction'' are limited in meaning. A finding given in an appeal, revision or reference arising out of an assessment

must be a finding necessary for the disposal of the particular case, that is to say, in respect of the particular assessee and in relation to the particular

assessment year. To be a necessary finding it must be directly involved in the disposal of the case. It is possible in certain cases that in order to

render a finding in respect of A, a finding, in respect of B may be called for. For instance, where the facts show that the income can belong either

to A or B and to no one else, a finding that it belongs to B or does not belong to B would be determinative of the issue whether it can be taxed as

A''s income. A finding respecting B is intimately involved as a step in the process of reaching the ultimate finding respecting A. If, however, the

finding as to A''s liability can be directly arrived at without necessitating a finding in respect of B, then a finding made in respect of B is an incidental

finding only. It is not a finding necessary for the disposal of the case pertaining to A. The same principles seem to apply when the question is

whether the income under enquiry is taxable in the assessment year under consideration or any other assessment year. As regards the expression

''direction'' in Section 153(3)(ii) of the Act, it is now well settled that it must be an express direction necessary for the disposal of the case before

the authority or court. It must also be a direction which the authority or court is empowered to give while deciding the case before it. The

expressions ''finding'' and ''direction'' in Section 153(3)(ii) of the Act must be accordingly confined.

4. For the foregoing reasons our answer to the aforesaid question of law is in favour of the assessee and against the Department as follows :

On the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the direction given by the Appellate Assistant

Commissioner was wholly unwarranted and redundant.

5. We make no order as to costs of this reference.