
(1996) 03 MP CK 0043

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Civil Case No"s. 85 of 1990 and 304 of 1991

Binodiram Balchand

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: March 8, 1996

Acts Referred:

- Income Tax Act, 1961 - Section 256(1), 258

Citation: (1997) 223 ITR 261

Hon'ble Judges: Nirmal Kumar Jain, J; Asha Ram Tiwari, J

Bench: Division Bench

Advocate: S.C. Bagdiya, for the Appellant; D.D. Vyas, for the Respondent

Judgement

A.R. Tiwari, J.

At the instance of the assessee, the Tribunal has stated the cases and referred the undernoted questions for our consideration and opinion u/s 256(1) of the Income Tax Act, 1961 (for short, "the Act").

2. In Miscellaneous Civil Case No. 85 of 1990, the Tribunal has stated the case and referred the question arising out of the order dated April 3, 1989. passed by the Tribunal in I. T. A. No. 653/(Ind) of 1984 on Application No. 46/(Ind) of 1989 :

" Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the assessee is not entitled to deduction of bad debt of Rs. 1,90,570 ? "

3. In Miscellaneous Civil Case No. 304 of 1991, the Tribunal has stated the case and referred the question arising out of the order dated June 18, 1990, passed by the Tribunal in I. T. A. No. 759/(Ind) of 1985 on Reference Application No. 174/(Ind) of 1990 :

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was not entitled to deduction of bad debt of Rs. 1,27,856 ?"

4. Briefly stated, the facts of the case are that the Tribunal confirmed the disallowance of Rs. 1,90,570 claimed as bad debt in one case and confirmed the disallowance of Rs. 1,27,856 as bad debt in the other case. Feeling dissatisfied, the assessee filed applications u/s 256(1) of the Act. The Tribunal on such applications stated the cases and referred the questions as noted above.

5. We have heard Shri S. C. Bagdiya, learned counsel for the applicant/ assessee, and Shri D. D. Vyas, learned counsel for the non-applicant/ Department in both these cases.

6. In the statement of the case of Miscellaneous Civil Case No. 85 of 1990, it is stated as under :

" The Tribunal also took notice of the fact that loans were taken by the directors of the debtor-company on their personal guarantee and, therefore, it was difficult to accept that in these transactions there was relationship of creditor and debtor between the assessee and the debtor-company as is found in money-lending transactions. "

7. In the order of the Tribunal (annexure "D"), it is recorded as under :

" Learned Departmental Representative vehemently opposed the appeal particularly on this ground of claim of bad debt pertaining to Binod Steel Limited. His contention is that the debtor-company Was more or less a concern of the assessee-Hindu undivided family inasmuch as that the loan of Rs. 2,61,785 taken from the bank and of Rs. 22,16,213 taken from M. P. Financial Corporation was personally guaranteed by those directors who are the members of the assessee-Hindu undivided family. According to him, the advances made by the assessee to the debtor-company were in the nature of investments and not in the nature of money-lending transactions."

8. It is thus clear that the aforesaid observation contained in the statement of the case does not shake hands with the position recorded in the order of the Tribunal. This goes to show that the statement of the case is not sufficient for consideration of the questions submitted to us.

9. In Miscellaneous Civil Case No. 304 of 1991, we noticed that the Tribunal has based its order also on the order passed by it in I. T. A. No. 653/(Ind) of 1984 on April 3, 1989, as is mentioned in the order in paragraph 9 of the order. It is thus clear that the order passed in I. T. A. No. 653/(Ind) of 1984 and the later order passed in I. T. A. No. 759/(Ind) of 1985 are interlinked. The order passed in I. T. A. No. 653/(Ind) of 1984 is covered by Miscellaneous Civil Case No. 85 of 1990 and as the statement of the case in the aforesaid case is found inconsistent with the order passed in that appeal, we find it fit to dispose of both these cases by this common order with appropriate directions.

10. We are satisfied that in view of the aforesaid statement made in the case and the record contained in the order out of which the question is referred to us, and in view

of the linkage of the case with the question contained in Miscellaneous Civil Case No. 304 of 1991, the statements of the cases are not sufficient to determine the questions as presented.

11. We, therefore, invoke Section 258 of the Act and refer the cases back to the Appellate Tribunal for the purpose of making appropriate additions thereto or alterations therein so as to bring the statement of the case in conformity with the order passed by the Tribunal.

12. As the matter is quite old, we further direct the Tribunal to make an endeavour to comply with the directions within a period of ten months from the date of the receipt of the copy of this order by it.

13. These applications thus stand disposed of in terms indicated above, but without any order as to costs.

14. Counsel fee for each side in each case is, however, fixed at Rs. 750, if certified.

15. Transmit a copy of this order to the Tribunal immediately in accordance with the law.

16. Retain this order in the record of Miscellaneous Civil Case No. 85 of 1990 and place its copy in the record of connected Miscellaneous Civil Case No. 304 of 1991, for ready reference.