
(1995) 12 MP CK 0020

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Civil Case No. 114 of 1987

Pratap Singh
Ravindrajeet Singh

APPELLANT

Vs

Commissioner of
Income Tax

RESPONDENT

Date of Decision: Dec. 12, 1995

Acts Referred:

- Income Tax Act, 1961 - Section 254, 256, 271(1)

Citation: (1996) 130 CTR 555 : (1996) 218 ITR 536

Hon'ble Judges: S.B. Sakrikar, J; A.R. Tiwari, J

Bench: Division Bench

Advocate: G.M. Chaphekar, S.S. Samvatsar and Sharda Jain, for the Appellant; D.D. Vyas, for the Respondent

Judgement

A.R. Tiwari, J.

The applicant (assessee) has filed this application u/s 256(2) of the Income Tax Act, 1961, seeking directions to the Income Tax Appellate Tribunal to state the case and refer the undernoted questions of law for our answer :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal has erred in law in proceeding to deal with the appeal on merits without deciding the objection of the assessee regarding validity and maintainability of appeal ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal has erred in law in accepting the revised memo of appeal as a valid appeal when the same was admittedly filed beyond the period of limitation ?

(3) Whether, on the facts and in the circumstances of the case, there was any material for the Tribunal to hold that the assessee wrote off the debit balance of the transportation account of Rs. 1,12,030 including impugned item of Rs. 77,507 with intention to conceal

the income ?

(4) Whether, on the facts and in the circumstances of the case, there was any evidence for the Tribunal to come to the conclusion that the assessee had deliberately concealed its income to the extent of Rs. 77,507 ?

(5) Whether, on the facts and in the circumstances of the case, the Tribunal has not erred in holding that entire amount of Rs. 10,000 was concealed income against the finding of the Commissioner of Income Tax (Appeals) that concealed income within the meaning of Section 271(1)(c) was only Rs. 8,857 ?

(6) Whether, on the facts and in the circumstances of the case, two members of the Tribunal have not erred in not referring the matter to a third member, when there was inconsistency in their view to arrive at the conclusion ?"

The facts lie in a narrow compass.

2. The applicant is a partnership firm and is assessed to Income Tax as a registered firm. It carries on business as a forest contractor and also obtains income from plying of trucks. This application relates to the assessment year 1974-75. The applicant filed the return for this assessment year. The Income Tax Officer while making the assessment made certain additions to the income disclosed by the applicant and also initiated proceedings for penalty u/s 271(1)(c) of the Act. In pursuance of such proceedings, the Income Tax Officer passed the final order on March 30, 1979, imposing penalty of Rs. 90,000 under the aforesaid provision (annexure "A"). The assessee filed an appeal before the Commissioner of Income Tax (Appeals) which was registered as IT-318/1979-80. By order dated December 13, 1982, the appeal was allowed partly. Penalty was reduced to Rs. 81,183 (annexure "B"). The Commissioner of Income Tax filed second appeal before the Tribunal on April 8, 1983, urging only a solitary ground. The appeal was registered as 358/IND of 1983. The copy of the memorandum of appeal is annexure "C". When the appeal came up for hearing on February 17, 1986, the applicant raised preliminary objections against the maintainability of the appeal. The arguments were heard, but no orders were passed to the knowledge of the applicant. Thereafter, the applicant received notice of a revised memorandum of appeal, filed by the Commissioner of Income Tax to the Tribunal on March 7, 1986. The applicant then filed objections against the revised memo of appeal on the ground of bar of limitation (annexure "D"). The objections were reiterated in the application dated April 25, 1986 (annexure "E"). The Tribunal, by its order dated May 30, 1986, allowed the appeal and set aside the order of the Commissioner of Income Tax (Appeals) and restored the order of the Income Tax Officer imposing penalty of Rs. 90,000 (annexure "F"). The Tribunal, did not touch upon the question posed against tenability of the appeal. The applicant then filed an application u/s 256(1) of the Act. The application was rejected. Aggrieved, the applicant has filed this application.

3. We have heard Sri G.M. Chaphekar, learned senior counsel with Shri S.S. Samvatsar and Shri Sharda, for the applicant, and Shri D.D. Vyas, learned counsel for the department.
4. Shri Chaphekar submitted that questions Nos. 5 and 6 were not pressed before the Tribunal and, as such, they are not pressed in this application also. As regards questions Nos. 1 and 2, counsel submits that only one proper question can be formulated to cover the entire controversy in this regard, and as regards questions Nos. 3 and 4 again, only one question can be reformulated to cover the topic. He, therefore, submitted that the two questions be referred after reformulation so as to cover the controversy indicated, vide questions Nos. 1 to 4.
5. Shri Vyas submitted that questions Nos. 1 and 2 were not raised before the Tribunal and, as such, they do not arise out of the order of the Tribunal. He further submitted that questions Nos. 3 and 4 are based on appreciation of facts and as such, they also do not arise out of the order as questions of law.
6. We proceed to consider the worth of the submissions urged before us.
7. It is an undisputed position that the objection against tenability of the appeal as initially presented was raised and thereafter the Commissioner of Income Tax filed the revised memorandum of appeal of which notice was issued to the applicant-assessee. In this background, the Tribunal was required to consider whether the revised memo of appeal could cure the defect and make the appeal tenable in law. The Tribunal was not right in abdicating its legal obligation by refusing to answer this question specifically. In the circumstances, we find that the question of tenability of appeal is a question which goes to the root of the matter and is required to be stated and referred.
8. As regards the question about concealment of income to the extent of Rs. 77,507, we find that the Tribunal held that it was a case of deemed concealment. The Tribunal held that :
- "Since the assessee had offered no other explanation, as per the Explanation to Section 271(1)(c) the amount added as income would be deemed to represent the income in respect of which particulars have been concealed. Therefore, even by virtue of this Explanation, the assessee having not provided any explanation to the extent of Rs. 77,507, it would be a deemed concealment and, therefore, to that extent penalty has to be upheld."
- As it was taken to be a case of deemed concealment of income, we are of the view that a proper question is required to be framed and directed to be referred.
9. In view of the aforesaid circumstances, we are unable to agree with Shri Vyas that the questions sought to be raised are questions of fact only or were not agitated.

10. In [Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others](#), it is held that "judicial review extends to an examination of the order as to its being perverse, irrational, bereft of application of mind or without any evidentiary backing".

11. The contention of counsel for the applicant is that the conclusion reached is without any evidentiary backing.

12. In the result, we find that the following questions are the questions of law which need to be referred :

"(1) Whether the Tribunal has erred in law in ignoring the objection in regard to the maintainability of appeal and whether the Tribunal has erred in accepting the fresh memorandum of appeal presented beyond the period of limitation and deciding the appeal on merits ?

(2) Whether the Tribunal has erred in reaching the conclusion about deemed concealment of income to the extent of Rs. 77,507 in the facts and circumstances of the case ?"

We are thus not satisfied with the correctness of the rejection of the Appellate Tribunal and require the Appellate Tribunal to state the case u/s 256(2) of the Act and to refer the aforesaid questions of law to this court.

13. This reference application is accordingly allowed in part in terms indicated above, but without any orders as to costs. Counsel's fee on each side shall be Rs. 750, if certified.

14. The Tribunal is also directed to comply with this order within six months from the receipt of the copy of the order.

15. A copy of this order is directed to be forwarded to the Tribunal under the seal and the signature of the Registrar of this court immediately.