
(1982) 12 MP CK 0004

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Civil Case No. 176 of 1980

Nandlal Bhandari and Sons

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Dec. 10, 1982

Acts Referred:

- Income Tax Act, 1961 - Section 144B, 263, 52

Citation: (1984) 147 ITR 710 : (1983) 15 TAXMAN 537

Hon'ble Judges: R.K. Vijayvargiya, J; G.G. Sohani, J

Bench: Division Bench

Advocate: Chaphekar, For Official Liquidator, for the Appellant; R.C. Mukati, for the Respondent

Judgement

Sohani, J.

By this reference u/s 256(1) of the I.T. Act, 1961 (hereinafter referred to as " the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following questions of law to this court for its opinion :

2. For the assessment year 1972-73 :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the order of the Income Tax Officer was prejudicial to the interest of the Revenue inasmuch as the draft order was not referred to the IAC in accordance with Section 144B and, therefore, on that ground, the CIT was justified in revising the order ?

(2) Whether the Tribunal was justified in upholding the order of the CIT, merely on the ground that there was a case for enquiry and that, therefore, there was nothing wrong in the order of the CIT directing the ITO to proceed in the matter afresh ? "

3. For the assessment year 1973-74:

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the order of the Income Tax Officer was prejudicial to the interest of the Revenue inasmuch as the draft order was not referred to the IAC in accordance with Section 144B and, therefore, on that ground, the CIT was justified in revising the order ? "

4. The material facts giving rise to this reference briefly are as follows:

5. The assessee is a private limited company. For the assessment years 1972-73 and 1973-74, the assessee filed returns showing loss of Rs. 51,83,327 and Rs. 61,28,350, respectively. The ITO, however, assessed the income of the assessee for the said assessment years at Rs. 16,14,560 and Rs. 7,42,250, respectively. The ITO did not follow the procedure prescribed by Section 144B of the Act while making these assessments. The Commissioner, exercising powers u/s 263 of the Act, issued a show-cause notice to the assessee stating that the assessment orders had been passed without following the procedure prescribed by Section 144B of the Act and that for the assessment year 1972-73, though the assessee had sold certain immovable properties to the sons and relatives of the directors of the assessee-company and there was material to believe that the transfer was effected with the object of avoidance of liability on account of capital gains, the ITO had not applied his mind to the applicability of Section 52 of the Act, when prima facie provisions of Section 52 of the Act were attracted. In reply to the notice u/s 263 of the Act, the assessee showed cause, but the Commissioner rejected the contentions urged on behalf of the assessee and held that the assessment orders passed by the ITO for the assessment years 1972-73 and 1973-74 were erroneous and prejudicial to the interest of the Revenue. In this view of the matter, the Commissioner set aside the assessment orders passed by the ITO and directed the ITO to make fresh assessments according to law, after giving an opportunity to the assessee of being heard. Aggrieved by this order, the assessee preferred appeals before the Tribunal. The Tribunal held that the order of the Commissioner revising the order of the ITO on account of failure to comply with the provisions of Section 144B of the Act was not bad in law. As regards the assessment year 1972-73, the Tribunal held that from the order of the Commissioner, it was clear that the matter had been left open. The Tribunal observed as follows :

" All that we can say is that a case for enquiry was there and since the Income Tax Officer has not specifically stated that he had looked into that aspect of the matter there was nothing wrong in the order of the CIT in directing the ITO to proceed in the matter afresh."

6. In this view of the matter, the Tribunal dismissed the appeals preferred by the assessee. Hence, at the instance of the assessee, the Tribunal has referred the aforesaid questions of law to this court for its opinion.

7. Shri Chaphekar, learned counsel for the official liquidator of the assessee, as the assessee is in liquidation, contended that an assessment order passed without complying with the provisions of Section 144B of the Act could not be held to be prejudicial to the interest of the Revenue so as to confer jurisdiction on the Commissioner to pass an order u/s 263 of the Act. Reliance was placed on the decision of this court in [H.H. Maharaja Raja Pawer Dewas Vs. Commissioner of Income Tax](#)). The contention must be upheld. Following the decision of this court in Misc. Civil Case No. 20 of 1980, we hold that the Tribunal was not right in holding that the orders passed by the ITO were prejudicial to the interest of the Revenue. Our answer to question No. 1 relating to assessment year 1972-73 and to the question relating to assessment year 1973-74 is in the negative and against the Revenue.

8. As regards question No. 2 arising out of the order of the Tribunal relating to the assessment year 1972-73, the learned counsel for the assessee contended that Section 52 of the Act had no application. Reliance was placed on the decision of the Supreme Court in [K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another](#) . But the question as to whether the provisions of Section 52 of the Act are or are not attracted in the instant case, does not arise at this stage. The Commissioner has merely directed the ITO to consider the question of applicability of Section 52 of the Act in view of the material on record. The Tribunal has held that as the ITO had not stated that he had looked into that aspect of the matter, there was nothing wrong in the order of the Commissioner directing the ITO to look into the matter afresh. We see no cogent reason for holding that the Tribunal was not justified in upholding the order of the Commissioner on that account. Our answer to question No. 2 relating to assessment year 1972-73 is, therefore, in the affirmative and against the assessee.

9. Reference answered accordingly. Parties shall bear their own costs of this reference.