

(1985) 11 MP CK 0028

Madhya Pradesh High Court

Case No: Miscellaneous Civil Case No. 175 of 1981

Angad Bai

APPELLANT

Vs

Commissioner of
Income Tax

RESPONDENT

Date of Decision: Nov. 1, 1985

Acts Referred:

- Income Tax Act, 1961 - Section 144B, 153(1)

Citation: (1987) 163 ITR 871

Hon'ble Judges: J.S. Verma, Acting C.J.; B.M. Lal, J

Bench: Division Bench

Advocate: B.L. Nema, for the Appellant; B.K. Rawat, for the Respondent

Judgement

J.S. Verma, Actg. C.J.

1. This is a reference u/s 256(1) of the Income Tax Act, 1961, at the instance of the assessee to answer the following questions :

"(i) "Whether, the Tribunal is correct in law in holding that the provisions of Sections 144B and 153 are procedural in nature and hence, the assessee's case will be covered by these sections ?

(ii) Whether, on the facts and in the circumstances of the case, the assessment order dated September 6, 1978, is barred by limitation and hence invalid ?"

2. The material facts are these : The relevant assessment year for the asses-see is 1975-76 ending on March 31, 1976. According to the relevant statutory provisions, the assessment had to be completed within a period of two years from the end of the assessment year and exclusion of the period of 180 days had to be made in computing this limitation of two years in accordance with Section 153(1)(a), Explanation 1(iv), read with Section 144B of the Income Tax Act, 1961. According to this calculation, the assessment had to be completed by passing such an order

before September 29, 1978. The assessment order in the present case was passed on September 6, 1978. The Tribunal has, therefore, taken the view that the assessment order was validly made on September 6, 1978, within the prescribed period of limitation. Aggrieved by this conclusion, the assessee sought a reference which has been made to answer the above quoted questions of law.

3. The facts already stated clearly show and Section 153 (sic), it must be held that the assessment order made on September 6, 1978, was passed within the prescribed period of limitation which was to expire on September 29, 1978. The Tribunal was, therefore, justified in taking this view and the above-quoted question No. 2 has obviously to be answered in favour of the Revenue.

4. The only surviving question now is question No. 1. The provisions contained in Sections 144B and 153 are obviously procedural in nature. Section 144B provides that in case of variation proposed by the Income Tax Officer, as mentioned therein, a draft of the proposed order of assessment has to be forwarded to the assessee and where any objection from the assessee is received, the same is to be forwarded along with the proposed order to the Inspecting Assistant Commissioner and the Income Tax Officer has to make the final assessment in accordance with the directions given by the Inspecting Assistant Commissioner. Section 153(1)(a), Explanation 1 (iv), provides for exclusion of the period commencing from the date on which the Income Tax Officer forwards the draft to the assessee and ending with the date on which the Income Tax Officer receives the directions from the Inspecting Assistant Commissioner u/s 144B of the Act subject to a maximum of 180 days. These provisions are obviously procedural in nature. The first question has, therefore, to be answered accordingly.

5. Consequently, the reference is answered against the assessee and in favour of the Revenue as under ;

(i) Order No. 1: The Tribunal was correct in holding that the provisions of Sections 144B and 153 of the Income Tax Act, 1961, are procedural in nature.

(ii) Order No. 2: The Tribunal was justified in holding that the assessment order dated September 6, 1978, was passed within the prescribed period of limitation and was, therefore, valid. There shall be no order as to costs.