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(1990) 09 BOM CK 0093

Bombay High Court

Case No: Income-tax Application No. 12 of 1989

Commissioner of Income Tax		APPELLANT
	Vs	
International Computers Indian Manufacture Ltd.		RESPONDENT

Date of Decision: Sept. 19, 1990

Acts Referred:

- Finance Act, 1989 - Section 263
- Income Tax Act, 1961 - Section 144(B), 256(2), 263, 263(1)

Citation: (1990) 90 CTR 123

Hon'ble Judges: T.D. Sugla, J; Sujata V. Manohar, J

Bench: Division Bench

Advocate: G. S. Jetley, for the Appellant; A.V. Sonde, for the Respondent

Judgement

T.D. Sugla, J.
This is an application by the Department u/s 256(2)of the Income Tax Act, 1961. The proceedings relate to the assessment year 1978-79. The Department has sought to raise two questions as questions of law. They are :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that passing of an order by the Commissioner of Income Tax (Appeals) resulted in the merger of the order of the Commissioner of Income Tax (Appeals) with the order appealed against, thereby ousting the jurisdiction of the Commissioner of Income Tax from exercising his powers u/s 263 of the Income Tax Act, 1961, in respect of the order appealed against ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the Commissioner of Income Tax cannot exercise his powers u/s 263

of the Income Tax Act in respect of an assessment order passed by the Income Tax officer, after obtaining approval from the Inspecting Assistant Commissioner u/s 144B of the Act"

2. It is seen that the first question is, on the face of it, covered by our court"s judgment in the case of Commissioner of Income Tax Vs. P. Muncherji and Company, in favour of the assessee and against the Revenue. It is also seen that an Explanation was inserted in section 263 by the Taxation Laws (Amendment) Act, 1984, with effect from October 1, 9184. The Explanation then had clauses (a) and (b) only and had nothing to do with the question involved herein. Clause (c) was inserted in the Explanation by the Finance Act, 1988, with effect from June 1, 1988. This clause then provided that where any order passed by the Assessing Officer had been the subject-matter of any appeal, the Commissioner"s power u/s 263(1) shall extend to such matters as had not been considered and decided in such appeal. The Finance Act, 1989, further amended Explanation (c) with retrospective effect from June 1, 1988. The result was that Explanation (c), thereafter, provided that where any order of the Assessing Officer had been the the subject-matter of any appeal filed on or before or after the 1st day of June, 1987, the Commissioner"s power u/s 263(1) shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal. Our court has examined the effect of Explanation (c) as retrospectively amended in the case of Ritz Ltd. and another Vs. Union of India and others, . One of us, T. D. Sugla J. had decided the petition. It is held that the amendment is retrospective with effect from June 1, 1988, which means that it will cover only those orders which became the subject-matter of appeal after that date. It is further held that Explanation (c) itself having been inserted with effect from June 1, 1988, any kind of amendment therein, whether retrospective or otherwise, could not be with effect from a date earlier to the date of insertion of Explanation (c). We are in complete agreement with the conclusion in that case.

3. In the present case, the Commissioner (Appeals) passed the order in appeal on January 3, 1983, and the Commissioner has passed the order u/s 263 on September 7, 1983. Both these events occurred not only before the insertion of Explanation (c) but also before the Explanation itself was inserted in the form of clauses (a) and (b) with effect from October 1, 1984.

4. In the above view of the matter. The answer to question No. 1 is squarely covered by the decisions of our court. No useful purpose will, therefore, be served in directing the Tribunal to refer this question to this court for opinion. In view of the fact that question No. 1 cannot be directed to be referred as a question of law to this court, question No. 2 becomes academic and cannot be directed to be referred as a question of law.

5. Rule stands discharged. No order as to costs.