
(1992) 11 BOM CK 0113

Bombay High Court

Case No: IT Ref. No. 485 of 1977

Commissioner of Income Tax

APPELLANT

Vs

Atamsingh Kohli and Bros.

RESPONDENT

Date of Decision: Nov. 10, 1992

Acts Referred:

- Income Tax Act, 1961 - Section 28

Citation: (1993) 115 CTR 57

Hon'ble Judges: U.T. Shah, J; Sujata V. Manohar, J

Bench: Division Bench

Advocate: Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Smt. Sujata Manohar, J.

The assessee is M/s. Atamsingh Kohli & Bros., Bombay.

2. The assessment year involved is 1965-66. In the P&L account for the relevant previous year, there was a surplus of Rs. 1,17,215. Out of this amount, a sum of Rs. 66,276 being profit from dry fruits and dates was also considered by the ITO in the assessment for the asst. yr. 1964-65. The assessee had, however, filed an appeal before the AAC challenging the inclusion of Rs. 66,276 in the assessment for the asst. yr. 1964-65.

3. When the assessment for the asst. yr. 1965-66 was made, this appeal before the AAC for the asst. yr. 1964-65 was pending. Hence, the ITO included this amount in the assessment for the year 1965-66 also.

4. In respect of the asst. yr. 1964-65, ultimately the Tribunal by its order dt. 16th July, 1973 held that the inclusion of the above amount of Rs. 66,276 in the aggregate profit for the asst. yr. 1964-65 was justified.

5. In respect of the asst. yr. 1965-66, the Tribunal has ultimately held that since the said amount of Rs. 66,276 was included in the aggregate profits of the asst. yr.

1964-65, the same amount cannot be included also in the asst. yr. 1965-66.

6. From the statement of the case, which is before us, it seems that the applicant (Department) while applying for the present reference, pointed out to the Tribunal that in respect of the Tribunal's findings in its judgment of 16th July, 1973 for the asst. yr. 1964-65, the High Court had directed the Tribunal to make a reference. The Tribunal, therefore, stated that the question involved for the asst. yr. 1965-66 being linked with the question involved for the asst. yr. 1964-65, a reference should be granted in respect of the asst. yr. 1965-66 also. Hence, the Tribunal has referred the following question to us for consideration at the instance of the Revenue.

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 66,276 included by the ITO in the assessment made on the assessee for asst. yr. 1965-66 was not assessable for the said assessment year?"

7. We find from the statement of the case that at the time when the application for the present reference was made before the Tribunal, nobody had appeared on behalf of the assessee and the Tribunal proceeded entirely on the basis of the statement made by the Department's Representative. Mr. Bhujle, learned Advocate for the assessee states that from his record there is nothing to show that any reference has been directed under s. 256(2) of the It Act, 1961 in respect of the asst. yr. 1964-65. He, therefore, submits that the order of the Tribunal dt. 16th July, 1973 pertaining to asst. yr. 1964-65 is final and binding. Mr. Jetly, learned Advocate for the Department, is also unable to state from his record whether any reference has been directed under s. 256(2) of the IT Act, 1961 in respect of the asst. yr. 1964-65.

8. In these circumstances, in the absence of any material which would indicate that the Department Representative had made a correct statement before the Tribunal relating to pendency of the reference for the asst. yr. 1964-65, we will have to proceed on the basis that the order of the Tribunal dt. 16th July, 1973 for the asst. yr. 1964-65 has become final. Since the sum of Rs. 66,276 is included in the aggregate profits of the assessee for the year 1964-65, the same amount cannot be included again in the aggregate profits of the assessee for the year 1965-66.

9. Hence, the question which is referred to us is answered in the affirmative and in favour of the assessee.

10. No order as to costs.