

Commissioner Of Income-Tax, Andhra ... vs Kotrika Venkataswamy And Sons on 7 January, 1971

Equivalent citations: [1971]79ITR499(SC), (1972)4SCC84, 1971(III)UJ163(SC)

Bench: J.C. Shah, A.N. Grover, K.S. Hegde

JUDGMENT

J.C. Shah C.J.

1. The facts in these four appeals are substantially common. We will deal with the facts in respect of only one appeal (Civil Appeal No. 631 of 1987) relating to the assessment of income-tax for the assessment year 1943-44. The decision will govern the other appeals.

2. The assessee declared in his return for the assessment year 1943-44 an income of Rs. 34,560/-On examination of the accounts produced by the assessee the income-tax officer found that there was inflation in purchase, spurious cash credits, diversion of sales, and bogus speculation losses were claimed. In assessing the income the Income-tax Officer made additions under four heads of different items of income and brought to tax an income of Rs. 1,43,433/-. The order passed by the Income-tax Officer was substantially confirmed in appeal by the Appellate Assistant Commissioner and by the Tribunal. The Income-tax Officer also commenced a proceeding Under Section 28(1)(c) of the Indian Income-tax Act and imposed a penalty of Rs. 24,500/-upon the assessee. Against the order passed in proceedings for levying penalty, appeals were taken to the Appellate Assistant Commissioner who confirmed the order passed by the Income-tax Officer. The Income-tax Appellate Tribunal was of the view that there was concealment only in respect of cash credits and in suppressing sales in the partners' accounts and reduced the penalty to Rs. 2,000/-only. The Commissioner of Income-tax then applied Under Section 66(1) of the Act for referring the following question :

Whether on the facts and in the circumstances of the case, and on true appreciation of the material on record, was the Appellate Tribunal justified in coming to the conclusion that the Department did not prove concealment of income in respect of the following additions, viz, (1) inflation of purchases-transaction in the name of K. Venkateshaiah Chetty Rs. 21,500/-, (2) speculation losses in the names of seven persons Rs. 26,789/-.

The tribunal declined to make a reference holding that no question of law arose out of its order, An application Under Section 66(2) of the Act calling for a statement of case from the Tribunal on the same question filed before the High Court also did not succeed. With special leave this appeal has been preferred.

3. In our judgment the question raised was purely one of fact. On the materials and the circumstances of the case if the Tribunal reached the conclusion that it did, that there was no suppression of sales on the facts disclosed, no case could be referred to the High Court Under Section 66(1) seeking to upset that conclusion. We do not think that any question of law arose which would justify the Tribunal in making a reference Under Section 66(1) to the High Court for calling for a statement of case from the Tribunal on that question.

4. Mr. Desai, appearing for the appellant, contends that even if the Tribunal's findings in the appeal relating to levy of penalty were based on appreciation of evidence the Tribunal had no jurisdiction to disagree with its own findings reached in the assessment proceedings. That, Mr. Desai contends, is a question of law and the Tribunal was bound to draw up a statement of case and refer that question, and if the Tribunal did not refer that question the High Court was entitled and was indeed bound to order that a statement of case on that question be submitted. But there no such question was included in the application for reference Under Section 66(1). The appellant could not ask the High Court to call for a statement of case on a question on which the Tribunal was not asked to submit a statement. Under Section 66(2) of the Act the High Court may call for a statement of case if the High Court is not satisfied about the correctness of the decision of the Tribunal refusing to refer a case to the High Court. The High Court cannot obviously be satisfied that the decision of the Tribunal in not submitting a statement on a question is incorrect when the Tribunal was never asked to submit a statement of case on that question. The tribunal in the present case was not requested to submit a case on the question whether it had no jurisdiction to arrive at a conclusion different from the one which it had reached in the proceeding for assessment.

5. Mr. Desai, in the alternative, contends that the question which was submitted to the Tribunal for reference to the High Court was itself wide enough to include the question about the jurisdiction of the Tribunal to reach a conclusion different from that which it had reached in the assessment proceeding. We are unable to agree with Mr. Desai. The frame of the question submitted clearly shows that the Tribunal was asked to do was to submit a case to the High Court on the question whether the Tribunal was justified in coming to the conclusion on the facts and circumstances of the case that no concealment was proved by the Department. That question cannot, in our judgment, include an inquiry whether the Tribunal had jurisdiction to reach a conclusion different from the conclusion it had reached in the proceeding for assessment.

6. The appeals therefore fail and are dismissed with costs. There will be one hearing fee in all the appeals.