

Kerala High Court

State Bank Of Travancore vs Commissioner Of Income-Tax on 6 August, 1985

Equivalent citations: 1986 160 ITR 872 Ker

Author: B Nambtar

Bench: K Bhaskaran, V B Nambiar

JUDGMENT Bhaskaran Nambtar, J.

1. The State Bank of Travancore has filed this application under Section 256(2) of the Income-tax Act for compelling the Appellate Tribunal to refer a question of law to this court after the Tribunal refused to refer the question. This application relates to the assessment year 1977-78. An identical question arose for the year 1976-77 also and the bank had filed an application, O.P. No. 4645 of 1983, for compelling a reference. But that application was dismissed as the question of law raised was concluded, so far as this court was concerned, by its decision in State Bank of Travancore v. CIT [1977] 110 ITR 336.

2. When this application came up for hearing, the counsel for the Revenue submitted that as an identical application for an earlier year was rejected, this application also has to be rejected as no question of law arises in view of State Bank of Travancore v. CIT [1977] 110 ITR 336. The Tribunal refused to refer as, in its opinion, no question of law arose after the decision in State Bank of Travancore v. CIT [1977] 110 ITR 336 when it was bound by a decision of this court.

3. The learned counsel for the petitioner, Shri Rama Shenoy, stressed the fact that this court had granted leave to appeal to the Supreme Court against the decision in State Bank of Travancore v. CIT [1977] 110 ITR 336 and appeals are pending before the Supreme Court. It cannot, therefore, be concluded that no question of law arises. He traced the legislative history of Section 256(2) of the Act, invited our attention to the provisions of the 1918 Act, the report of the All India Income-tax Committee necessitating the change in the phraseology in the 1922 Act and later in Section 256(2) of the present Act and relied on the decisions of the Madras High Court in CWT v. Sri Venkatesa Mills Ltd. [1965] 56 ITR 384 and that of the Allahabad High Court in CIT v. Vindeshwari Trading Corpo-

ration [1978] 113 ITR 791. He also relied on an unreported decision of a Division Bench of this court in O.P. No. 3078 of 1974. He states that these salient points were not brought to the notice of this court on the earlier occasion when this court did not compel reference for one previous year and that cannot be a binding precedent for refusing to exercise the jurisdiction under Section 256(2) for the subsequent years in the present petition. We are, indeed, appreciative of the very learned arguments advanced by Shri Shenoy.

4. We shall consider the scope of Section 256(2) of the Income-tax Act for the purpose of this case.

5. Section 256(2) reads thus :

"If, on an application made under Sub-section (1), the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of such refusal, apply to the

High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition, the Appellate Tribunal shall state the case and refer it accordingly ".

6. The Appellate Tribunal can refuse to state a case on the ground that no question of law arises. If the High Court, on an application by the assessee or the Commissioner, is not satisfied with the correctness of that decision of the Tribunal, the High Court may require the Appellate Tribunal to state a case and refer the question of law. A question of law should arise; and thereafter the refusal to refer by the Appellate Tribunal attracts the jurisdiction of the High Court under Section 256(2). A fortiori, a question of fact is outside the reference jurisdiction of the Tribunal. Even if a question of law arises, if the question is merely academic because the Supreme Court has already declared the law, it remains as a proposition, not as a question of law arising for determination. On the other hand, a question of law settled by the High Court to which the Appellate Tribunal is subordinate may still arise when the same question is pending before the Supreme Court or when the same question is the subject of divergent judicial opinion. Even when the question raised may admit of fresh consideration by the same High Court, a question of law arises under Section 256(2). In such a case, the question is not whether the Tribunal, already bound by the decision of the High Court, has not decided correctly or not; but the question is whether, still a question of law did not arise for determination. It may be that, after the reference is made, the High Court may still answer on the basis of the earlier view already expressed.

7. But at the time of deciding whether a reference is called for, the only point to be considered is whether an arguable question of law arises, not whether that question would be answered in a particular way or not. A question of law supportable by reasonable arguments, an arguable question of law, is all what is required under Section 256(2).

8. In CIT v. Managing Trustee, falakhabai Trust [1967] 66 ITR 619, the the Supreme Court held thus (at p. 622):

" At this stage, we express no opinion on the correctness of that judgment. It must be pointed out that the High Court in dealing with the application under Section 66(2) of the Act is not called upon to decide whether the question may ultimately be decided in favour of the asses-see; the High Court had only to consider whether a question of law which may be supported by reasonable argument, arose out of the order of the Tribunal. "

9. The view we have expressed finds support in CWT v. Sri Venkatesa Mills Ltd. [1965] 56 ITR 384, where the Madras High Court observed thus (at p. 392):

" In the instant case, as observed earlier, the Supreme Court has already granted special leave and an appeal is pending from the decision of this court reported in Ramaraju Surgical Cotton Mills v. Commissioner of Wealth-tax [1962] 46 ITR 820. This means that the Supreme Court has been satisfied that the decision of the High Court requires scrutiny, that the point is a debatable one, and that a substantial question of law is involved. We perused the judgment of this Bench of this court in Ramaraju Surgical Cotton Mills v. Commissioner of Wealth-tax [1962] 46 ITR 820 and we may

observe that the learned judges felt some difficulty in construing the words 'set up'. They have observed that in the special context of the exempting provision of Section 5(1)(xxi) of the Act, the words 'set up' present some complexity, creating a stubborn indefiniteness.

The proper interpretation of an important provision of a statute, Section 5(1)(xxi), is beyond doubt a question of law and the point decided by the Tribunal is by no means inarguable or self-evident. On the other hand, it is quite a fairly arguable point."

10. In CIT v. Vindeshwari Trading Corporation [1978] 113 ITR 791, the Allahabad High Court said thus (at pp. 792 and 793):

" In view of the fact that there is conflict of opinion between the two High Courts on the question sought to be raised by the Commissioner of Income-tax, which does not stand concluded by any authority of the Supreme Court, it cannot be said that no statable question of law arises from out of the appellate order of the Tribunal. "

11. We agree with the Madras and Allahabad views.

12. In the present case, State Bank of Travancore v. CIT [1977] 110 ITR 336, holds the field at present so far as this court is concerned. This court itself has granted leave to appeal to the Supreme Court. Appeals are now pending before the Supreme Court. Meanwhile, the decision in State Bank of Travancore v. CIT [1977] 110 ITR 336, seems to have been doubted by some other High Courts and the learned counsel submits that there is an earlier unreported decision of this court which has taken a different view. The question of law posed is arguable, debatable and the Tribunal should have referred the question of law arising from its decision to this court. It has not done so. Therefore, the Tribunal has to be compelled to refer the question of law arising in the case when the question has not so far been answered by the Supreme Court.

13. We direct the Income-tax Appellate Tribunal, Cochin Bench, to state a case and refer the following question of law for decision of this court:

" Whether, on the facts and in the circumstances of the case, the addition of Rs. 24,545 representing the interest on sticky advances as income of the assessment year 1977-78 is valid in law ? "