

Supreme Court of India

K.N. Razdan vs Commissioner Of Income-Tax on 11 August, 1994

Equivalent citations: 1994 210 ITR 827 SC

Bench: B J Reddy, N Singh

ORDER

1. This appeal arises from the judgment of the Calcutta High Court in Income-tax Reference No. 221 of 1987 see [1993] 204 ITR 83 answering, the questions referred in favour of the Revenue, and against the assessee. The question referred is to the following effect (at page 86) :

Whether, on the facts and in the circumstances of the case, the rental income derived by the assessee was assessable in the hands of the assessee as income from other sources under Section 56 of the Income tax Act, 1961 ?

2. It appears that this reference came up for hearing in the first instance on October 3, 1988, when it was said to have been disposed of in favour of the assessee following the decision in Reference Case No. 266 of 1983 pertaining to this very assessee, but relating to an earlier assessment year. As a matter of fact, yet another Reference Case (being No. 268 of 1983) pertaining to this very assessee for a different assessment year was also disposed of along with Reference Case No. 266 of 1983. Subsequently, it appears that all the said orders were recalled on August 31, 1989, and the matters reheard and the impugned judgment delivered on March 12, 1992, now answering the references against the assessee and in favour of the Revenue. It is stated that the judgment under appeal covers all the three reference cases aforesaid.

3. Learned Counsel for the appellant submits that having first delivered judgment in these reference cases, the High Court had no power in law. to recall those orders and hear the references afresh and come to a different conclusion. He submits that since the power under Section 256 of the Income-tax Act is judicial in nature, the power of review is not available to the High Court, since the Act confers no such power. Counsel for the Revenue, however, submits that this objection was not raised by counsel for the assessee either at the time of recalling the order or at the time of the final disposal of the reference cases. He also disputes the basic facts alleged by counsel for the petitioner. Though learned Counsel for the assessee asserts that such an objection was taken, the judgment under appeal does not refer to any such argument.

4. In this state of affairs both counsel for the assessee as well as the Revenue agreed after arguing for some time, that all the orders made by the High Court in the said three reference cases be set aside and the matters remitted to the High Court for disposing of the reference cases afresh on the merits, without references to the earlier orders passed in these matters by the High Court. We accept the plea of learned Counsel. The appeal is accordingly disposed of in terms of the said joint request. The reference cases be heard afresh on the merits and answered according to law. No costs.