

Cit Vs. Prakashwati

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Court : Allahabad

Decided On : Sep-28-2004

Reported in : [2005]144TAXMAN313(All)

Appeal No. : IT Reference No. 14 of 1985 28 September 2004

Appellant : Cit

Respondent : Prakashwati

Advocate for Pet/Ap. : A.N. Mahajan, *for the Assessee Abhinav Upadhaya, for the Revenue.*

Judgement :
ORDER

R.K. Agrawal, J.

The Income Tax Appellate Tribunal, Delhi has referred the following questions of law under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for opinion to this Court:

'1. Whether the Tribunal was correct in holding that the report of the Valuation Officer was not part of the record for the purposes of action under section 263 of the Income Tax Act, 1961?

2. Whether on the facts and in the circumstances of the case, the learned Tribunal was legally correct in cancelling the CIT's order dated 12-4-1982 under section 263(1) of the Income Tax Act, 1961 holding it to be without jurisdiction and invalid?'

2. Briefly stated, the facts giving rise to the present reference are as follows:

The respondent-assessee is an individual. The reference relates to the assessment years 1976-77 to 1980-81. The respondent-assessee had purchased an old house for a sum of Rs. 81,000 during the financial year 1976-77. It was demolished and a new construction was undertaken. The construction was completed in the financial year 1979-80, relevant to the assessment year 1980-81. The assessee had shown an investment of Rs. 1,66,860 which was made out of withdrawal from the firm M/s. Umrao from Singh Makhan Lal, Najibabad. The Income Tax Officer valued the property on the basis of the report submitted by the Income-tax Inspector at Rs. 1,87,660 and the difference of Rs. 20,800 was added towards the income of the assessee in the assessment year 1980-81. In respect of the Wealth Tax proceeding, the Wealth Tax Officer referred the matter to the Valuation Officer for determining the value of the property. The Wealth Tax Officer determined the value of the property as on 31-3-1980 Rs. 6,00,000 when the building was not even complete. Considering the report of the Valuation Officer, the Commissioner of Income-tax initiated proceeding under section 263 of the Act on the ground that was erroneous and also prejudicial to the interest of the revenue and on giving an opportunity of hearing to the assessee, vide order dated 12-4-1982, restored the assessment to the file of the Income Tax Officer. Feeling aggrieved, the respondent preferred separate appeals before the Tribunal. The Tribunal had held that under section 263(1) of the Act, the assessing officer has to examine the record as it stood at the time when the assessment order was passed by the Income Tax Officer and not the record as it stood at the time of examination by the Commissioner. Since the report of the Valuation Officer was not in existence at the time will the Income Tax Officer had passed the assessment order in question, it could not and did not form part of the record on which the order of the Income Tax Officer was based, hence the order passed under section 263(1) of the Act was without jurisdiction and invalid. The Tribunal consequently

cancelled the order dated 12-4-1982 passed by the commissioner of Income-tax.

3. We have heard Sri A.N. Mahajan, the learned Standing counsel for the revenue and Sri Abhinav Upadhaya who has put in appearance on behalf of the respondent.

4. The learned counsel for the revenue submitted that under clause Explanation to sub-section (1) of section 263 of the Act 'record' has defined 'to include and shall be deemed always to have included records relating to any proceeding under this Act available at the of examination by the Commissioner'. The phrase 'shall include and shall be deemed always to have included in clause (b) was substituted for 'includes' by the Finance Act, 1989, with effect from 1-6-1988.

5. The Apex Court in the case of CIT v. Shree Manjunathesware Packing Products and Camphor Works (1998) 231 ITR 53 has held that in view of the clear words used in clause (b) of Explanation to section 263(1) while calling for and examining the record of any proceeding under section 263(1), it is and it was open to the Commissioner not only to consider the record of that proceeding but also the record relating to that proceeding available to him at the time of examination.

6. Respectfully following the aforesaid decision, we are of the considered opinion that the Tribunal was not justified in limiting the record which was available before the Income Tax Officer at the time of assessment. The Commissioner was well within his jurisdiction to take into consideration the report of the Valuation Officer which was available to him at the time of examination for the purpose of initiating the proceeding under section 263(1) of the Act.

7. In view of the foregoing discussion, we answer the questions of law referred to us in the negative, i.e., in favour of the revenue and against the assessee. There shall be no order as to costs.