Cit Vs. Ashok Pal Daga

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Court : Madhya Pradesh

Decided On : Sep-22-2004

Reported in : [2005]142TAXMAN27(MP)

Appeal No. : Misc. Civil Case No. 532 of 1995 22 September 2004

Appellant : Cit

Respondent : Ashok Pal Daga

Advocate for Pet/Ap. : R.L. Jain, *for the Applicant* G.M. Chafekar & Sarda, *for the Respondent*.

Judgement :
ORDER

A.M. Sapre, J.

The decision rendered in this case shall also govern disposal of other case being M.C.C. No. 511 of 1995 because both these cases arise out of the same order and secondly they arise between the same parties except the difference is that of different assessment years.

2. This is an application made by the revenue (Commissioner of Income Tax) under section 256(2) of the Income Tax Act consequent upon the dismissal of their application made under section 256(1) ibid. by the Tribunal being R.A. Nos. 94, 97

and 98/Ind/94 on 12-12-1994 which in turn arise out of an order dated 8-7-1994 passed by Tribunal in consolidated cases being ITA Nos. 288, 289, 781, 557 and 558/Ind/92 arising out of assessment years 1987-88 to 1989-90 in relation to same assessee, i.e., respondent herein. According to Tribunal (ITAT) the questions proposed by the revenue do not really arise out of the order passed by Tribunal in appeal referred supra and they are in fact questions relating to facts. It is for this reason and after recording a finding to this effect, the Tribunal declined to allow the allocation made by the revenue under section 256(1) ibid., and thus refused to refer the statement of case to this court for answering the question proposed. As a consequence of this rejection, the revenue has come up under section 256(2) of the Act to this court praying for calling the reference from the Tribunal on the question proposed by the revenue. Notice of this application was issued to respondent/assessee. They are served and represented.

3. Heard Shri R.L. Jain, learned counsel for the applicant and Shri G.M. Chafekar, learned senior counsel with Shri Sarda, learned counsel for non-applicant.

4. Having heard learned counsel for the parties and having perused record of the case, we are of the view that Tribunal was right in holding that the questions proposed by the revenue are essentially based on facts and hence, they are not referable questions of law for being answered by this court. In other words, we too have formed the same opinion namely that the question proposed are questions of fact and no that of law a sine qua non for making a reference under section 256(1) ibid As a consequence, the application is liable to be dismissed.

5. Following two questions are proposed by revenue for being answered by this court in exercise of powers conferred under section 256(1) ibid :

'1. Whether on the f acts and in the circumstances of the case, the Honble Tribunal is justified in Law in holding that there was nexus between the borrowings on which interest expenses was incurred and income earned by the assessee by way of commission from the business of procuring policies of Life Insurance ?

2. Whether on the facts and in the circumstances of the case, the Honble Tribunal is justified in Law, in holding that the assessee did not earn income from arranging

Hawala or bogus entries of credit for a third party ?'

6. While deciding the aforesaid two questions on merits in appeal, the tribunal as a fact recorded a finding that assessee in order to carry on his commission business of IDC borrowed loan and repaid it. Once, it is found as a fact that claims of the assessee was a bona fide and genuine one; it becomes a finding of fact. Such finding has to be then given effect to for claiming deduction out of the total income. This then does not involve any interpretation of section and/or circular under the Act.

7. It is for this reason : we do not find any issue of law as such which can be answered by this court on merits. It being a settled principle of law relating to exercise of jurisdiction under section 256(1) as also under section 256(2) the question proposed must be a question of law. It is only then the same can be referred for drawing statement of case. Such does not appear to be a case of that nature.

8. In view of aforesaid discussion, the application made by revenue under section 256(2) of the Act for calling the reference from the Tribunal is found to be devoid of any merit. The application fails and is hereby dismissed.

No costs.