

State Bank of Indore Vs. Cit

State Bank of Indore Vs. Cit

SooperKanoon Citation : sooperkanoon.com/511875

Court : Madhya Pradesh

Decided On : Feb-11-2005

Reported in : [2006]283ITR363(MP)

Judge : A.M. Sapre and ;Ashok Kumar Tiwari JJ.

Appeal No. : ITR No. 8 of 2000 11 February 2005 A.Y. 1985-86 & 1986-87

Appellant : State Bank of Indore

Respondent : Cit

Advocate for Pet/Ap. : Mr. R.T. Thanevala *for the Assessee* Mr. R.L. Jain with Ku. V. Mandlik *for the Revenue*

Judgement :

This is an Income-tax Reference made at the instance of assessee under section 256(1) of the Income Tax Act by the Tribunal by an order passed in R.A. No. 83/85/Ind/97, dated 13-11-1999 which in turn arise out of an order passed by Tribunal on 23-5-1997 in Interest tax Appeal, No. 1 and 2/Ind/91 to answer following question of law said to arise out of the aforesaid appellate order

'Whether on the facts. and the circumstances of the case, Income tax Appellate Tribunal was justified in holding that the order of assessment under section 8(2)- of the Interest tax Act 1974 dated 6-1-1989 is erroneous and prejudicial, to the interests of the revenue and the Commissioner of Income tax has properly

exercised his jurisdiction under section 19 of the Interest tax Act 1974.

2. Heard Shri R.T. Thanevala, learned counsel for the applicant/assessee and Shri RL Jain, learned senior counsel with Ku. V. Mandlik, learned counsel for the non-applicant/Revenue.

3. In short, the question that arises for consideration in this reference is whether CIT was justified in invoking his suo moto revisional powers conferred under section 19 of the Interest-tax Act for setting aside of the assessment order dated 6-1-1989, on the ground that it is not only erroneous but equally prejudicial to the Interest of the revenue. It is on the basis of this categorical finding having been recorded by the Commissioner which alone was called for and/or necessary for invoking the jurisdiction under section 19 of the Interest-tax Act (akin to section 263 of the Income Tax Act), the assessment- order passed by assessing officer came to be set aside, giving rise to making of this reference at the instance of assessee under section 256(1) of the Act to answer the question quoted supra.

The case arises out of assessment year 1985-86 and 1986-87. It is in these two years the assessing officer had granted benefit to assessee on two issues namely interest on dead and doubtful sticky loans and on export subsidy received from Reserve bank of India. In the opinion of Commissioner both the issues ought not to have been decided in favour of assessee and since the claim on them was not only noticed to be erroneous, it was noticed to be prejudicial in the interest of revenue. It is on this basis, the Commissioner considered in the interest of revenue to invoke his Revisionary powers under section 19 of the Act and after granting an opportunity to assessee recalled the order of assessing officer in so far as it related to the aforementioned issues. This is how and the manner in which the Tribunal decided the issue in question in para 9 of their appellate order while upholding the order of Commissioner when challenged unsuccessfully by the assessee in appeal:-

'Para 9 We have heard the rival submissions of the parties and carefully perused the orders of the authorities below and the documents placed on record. The judgments quoted by the assessee were also carefully perused by us and we agreed with the contentions of the assessee that for invoking the revisional

jurisdiction under section 19 of the Act, the assessing officer was erroneous and prejudicial to the interests of revenue. The contention of the assessee is also acceptable to us that the assessing officer is not, supposed to discuss each and every claim of the assessee but, each and every case should be examined on its own facts and circumstances in the light of the available judicial pronouncements and the relevant provisions of law. In the instant case, there is no dispute that since 1960-61 the assessee has been adopting hybrid system and crediting the interest on sticky loan to suspense account and the said treatment was accepted by the revenue. After relying upon the Tribunal's order for the assessment year 1961-62 the assessee has filed the return under the Interest-tax Act for assessment year 1985-86 in which he did not offer the export subsidy and interest on sticky loans to tax nor did it furnish any note to this effect but for the assessment year 1986-87. The assessee has furnished a note to the return and a covering letter in which the reasons of non-offering the interest on sticky loan to tax were given. The return for the assessment year 1986-87 was filed on 18-6-86 after the delivery of the land mark judgment of the Supreme Court in the case of State bank of Travencore in which their Lordships have held that the interest on sticky loans is exigible to tax if the assessee has been maintaining the books of account by accepting the mercantile system. It appears to us that this judgment prompted the assessee to give a note about his treatment to the interest on sticky loans. Besides, the assessee has also filed two letters in which he has justified his claim of non-offering the export subsidy and interest on sticky loans to tax. The assessment order was passed on 6-1-89 after the assessment order passed under the Income Tax Act for the assessment year 1985-86 in which the claim of the assessee with regard to the interest on sticky loans was rejected by the assessing officer. This fact cannot be ignored that the assessment orders under the Income Tax Act and under the Interest-tax Act for the assessment year 1986-87 were passed by the same assessing officer, Mr. Swatantrakumar. In the assessment order under the Income Tax Act the claim of the assessee was rejected, but in the assessment order under the Interest-tax Act the claim of the assessee was allowed. No reasons are available on record as to why the same assessing officer has taken a contrary view at the interval of two months in two assessment orders under different acts for the same assessment year. This factor

cannot be ignored that in the earlier assessment years 1-1983-84 and 1984-85 the CIT(A) had disallowed the claim of the assessee with regard to interest on sticky loans vide its order dated 16-3-1988 against which the appeal of the assessee was pending before the Tribunal at the time when the assessment order was passed by the assessing officer under the Interest-tax Act. When there is overwhelming evidence on record that the allowability of the claim of interest on sticky loans is a debatable issue the claim of the assessee should not have been allowed without making any discussion in the assessment order by the assessing officer. No doubt the assessing officer is not supposed to discuss each and every claim of the assessee in detail but he cannot shut his eyes over the surrounding evidence and circumstances and the material on record while passing an assessment order. It is also brought to our notice that the set aside assessment order has been passed in which the claim of the assessee was rejected which was confirmed by the CIT(A) and is still pending before us for disposal. The facts and circumstances of the case lead us to deduce that the assessing officer has not applied his mind and we are, therefore, of the view that the order of assessment is erroneous and prejudicial to the interest of the revenue and the CIT has properly exercised this jurisdiction. Accordingly, we uphold the order of the CIT and dismiss the appeals of the assessee.'

5. In our considered opinion, the Commissioner seems to be right in invoking the powers of Revision under section 19 ibid. The Tribunal has gone into the question as to whether assessing officer's order was erroneous and prejudicial to the interest of revenue and has come to a definite conclusion on facts that it was. It was then the Tribunal upheld the order of Commissioner as being in accordance with law.

6. In our opinion, the manner in which the Tribunal has examined the question on facts which was equally necessary for the purpose of satisfying the legality and propriety of the order of Commissioner can not be faulted with in our reference jurisdiction on legal side. We have examined the issue in our limited reference jurisdiction as a reference court rather than the appellate court and we find no error in the approach of the Tribunal while deciding the issue against the assessee and in favour of revenue. Once, the finding of an order being erroneous and

prejudicial for the interest of revenue is recorded by the Commissioner on facts of case, then it is the duty of appellate court, i.e., tribunal to examine the said question as an appellate court and further' record, is finding.

7. We are thus unable to hold in favour of assessee on the question referred to this court.

8. In view of aforesaid, we answer the question against the assessee and in favour of revenue (CIT). In other words, we answer the question by answering that tribunal was justified in holding that the order of assessment framed under section 8(2) of the Interest tax Act dated 6-1-1989 is erroneous and prejudicial to the interest of revenue and CIT has properly exercised his jurisdiction under section 19 of the Act.

No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com