

Cit Vs. K.L. Ahuja

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Court : Delhi

Decided On : Dec-19-2000

Reported in : [2001]116TAXMAN835(Delhi)

Appeal No. : IT Ref. No. 72 of 1981 19 December 2000

Appellant : Cit

Respondent : K.L. Ahuja

Advocate for Pet/Ap. : R.C. Pandey; Ms. Prem Lata Bansal; and Ajay Jha, for the Applican

Judgement :

Arijit Pasayat, C.J.

At the instance of revenue, the Tribunal, Delhi Bench-D has referred the following question under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) for opinion of this court :

'Whether, on the facts and in the circumstances of the case, the Tribunal is legally correct in holding that the Commissioner had no jurisdiction under section 263 to cancel the Income Tax Officers order dated 28-2-1977 passed under section 154 ?'

2. Brief reference to factual aspects would suffice :

The assessee, who was an employee of the Central Government, joined the Indian Oil Corporation Limited (IOC), a public sector undertaking, where he was permanently absorbed. On his retirement from Central Government service, he received a sum of Rs. 9,714 towards commuted value of 1/3rd of the pension due to him plus a sum of Rs. 19,429 as terminal benefit calculated at twice the amount of the commuted value of pension. Accounts officer while paying terminal benefits deducted tax at appropriate rate out of it. The assessed filed its return and was assessed treating terminal benefits as taxable. However, relief under section 89 of the Act was allowed. Assessment was completed on 18-10-1975. On 31-12-1976, the assessed approached the Income Tax Officer for rectification of the order under section 154 of the Act taking the plea that terminal benefits were entirely, exempted from tax in view of the decision of the Bombay Bench of the Tribunal in the case of one P. Muralidharan. Accepting the said contention, the Income Tax Officer passed an order on 28-2-1977. As a result of the aforesaid exercise, entire amount of terminal benefits was taken to be non-taxable and refund order was issued. The Commissioner after going through the order passed by the Income Tax Officer, was of the opinion that the said order under section 154 was erroneous and prejudicial to the interests of revenue. He, therefore, issued notice under section 263 of the Act and passed an order cancelling the order passed under section 154. The assessed assailed the said order before the Tribunal. When the matter was heard, assessed placed reliance on a Circular No. CIT/CT/M-1(69)/76-77/27141, dated 10-9-1976 issued by the Commissioner. According to the said Circular, the Central Board of Direct Taxes (the Board) had in their Letter No. 173/126-76-II (AI), dated 30-5-1976 accepted the decision of the Bombay Bench as laying down the correct position in law. The Commissioner had, therefore, directed that whenever an assessed applied under section 154 pointing out the mistake in its assessment, same should be rectified following the instructions of the Board. Obviously the Income Tax Officer followed the circular. Though there was no reference to the circular in the order under section 154, obvious reference therein was to the decision in P. Muralidharans case. It was observed by the Tribunal that the Income Tax Officer was more or less copying the words in the circular of the Board which had been taken note of the circular issued by the Commissioner (Appeals). The Tribunal was of the view that it was a case

where an order under section 154 was passed by the Income Tax Officer under the directions of the Commissioner and, therefore, section 263 will not be applicable. The Tribunal, inter alia, observed as follows :

'When the Income Tax Officer passes an order in his own discretion and that order is found to be erroneous or prejudicial to the interests of the revenue under section 263 it is the power to the Commissioner to rectify it but when an Income Tax Officer passes an order not in his own discretion or wisdom but following the directions of the Commissioner who follows in turn the direction of the Board, to whom both of them are subordinate, the Commissioner who succeeds the Commissioner who had issued the impugned instructions in a circular letter to the Inspecting Assistant Commissioner cannot treat the order of Income Tax Officer as erroneous or prejudicial to the interests of revenue because it would in fact amount to reviewing his predecessors order which is not permissible under section 263. We accordingly hold that the impugned order passed by the learned Commissioner was without jurisdiction. Under the circumstances, we cancel the said order'.

3. On being moved for reference the question as aforesaid has been refer-red for opinion of this court.

We have heard the learned counsel for the revenue. There is no appearance on behalf of the assessed in spite of service of notice.

4. In view of the factual position highlighted by the Tribunal, the relevant portion of which has been quoted above, decision of this court in C.K. Karunakaran v. Union of India : [1981]127ITR136(Delhi) applies to the facts of the case. On merits also the assessed has to succeed. The question referred is, therefore, of academic interest and we decline to answer the same.

The reference stands disposed of.