

Delhi Cloth and General Mills Ltd.

Vs

State of U. P. and Others

Civil Appeal No. 1249 of 1968

(K.S. Hegde, A.N. Grover JJ)

11.08.1971

JUDGMENT

HEGDE J. -

This appeal was brought on the strength of a certificate granted by the High Court of Allahabad under article 133 (1) (a). Dr. L. M. Singhvi, learned counsel for the State, has raised a preliminary objection as to the maintainability of the appeal on the ground that the High Court was not competent to grant a certificate under article 133 (1) (a). It may be noted that the appellant's prayer was that he may be granted a certificate both under article 133 (1) (a) as well as under article 133 (1) (c). The High Court has not granted certificate under article 133 (1) (c). It only granted a certificate under article 133 (1) (a). We have now to consider whether the certificate granted is in accordance with the law. If we come to the conclusion that the certificate granted is not in accordance with the law the this appeal cannot be maintained, and the matter will have to go back to the High Court for consideration whether there are grounds to grant a certificate under article 133 (1) (c). As the High Court has not gone into that question, it has to go into that question anew. Whether a certificate under article 133 (1) (b) can be granted if a prayer is made to that effect is a matter for the High Court to decide, after hearing both the parties.

The question before the High Court related to the interpretation of section 6 (2b) of the U. P. Agricultural Income-tax Act. The controversy between the parties was whether the appellant had an option to change the method of assessment. This issue was tried as a preliminary issue. The assessing authority came to the conclusion that he could not change the method of assessment. That decision was affirmed by the Board of Revenue. The decision of the Board of Revenue was challenged before a single judge of the High Court in a Writ petition under article 226 of the Constitution. The learned single judge allowed that application and quashed the impugned orders holding that it was open to the assessee to change the option as regards the method of assessment. But in appeal the Division Bench set aside the order of the learned single judge and dismissed the writ petition. Against that order, this appeal has been brought. Quite clearly the order appealed against does not come within the scope of section 133 (1) (a). The issue before the High Court was incapable of valuation. That being so, the High Court was not justified in granting a certificate under article 133 (1) (a). Hence we revoke that certificate and send back the case to the High Court for a fresh consideration as mention earlier.

We make no order as to costs in this appeal.

Certificate revoked. Case remanded.

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