

SUPREME COURT OF INDIA

Commissioner of Income Tax, Kohlapur

Vs.

Jaykumar B. Patil

(S Bharucha and S Sen JJ.)

13.12.1996

JUDGMENT

S.P. BHARUCHA, J.

1. Delay condoned.
2. Special leave granted.
3. The Revenue sought the reference of the following two questions:

(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the CIT had no jurisdiction and powers to initiate proceedings under Section 263 of the Income Tax Act, 1961, in respect of issues not touched by the CIT(A) in his appellate order?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that not only the issues dealt with in the assessment order but also the other issues were merged in the CIT(A)'s order ignoring the provisions contained in clause (c) of Explanation to Sub-section (1) of Section 263 of the Income Tax Act, 1961?

The High Court at Bombay declined to call for the reference. Hence the appeal.

4. Notice on the SLP has been served upon the respondent but he has not chosen to appear. The notice stated that the matter might be disposed of at the SLP stage in view of the judgment of this Court dated 23-1-1996 in CIT v. Shri Arbuda Mills Ltd., ,

5. That judgment covers the two questions that were sought to be raised. They were questions of law and the High Court ought to have called for a reference thereof, but, having regard to the fact that this Court has in the aforementioned case squarely dealt therewith, we shall deem this to be a reference of the questions to ourselves and, following the aforementioned case, answer the questions thus: in the negative and in favour of the Revenue.

6. The appeal is allowed accordingly, with no order as to costs.

