

Commissioner of Income Tax

v.

T.P. Asrani

(Supreme Court Of India)

HON'BLE JUSTICE D. P. WADHWA HON'BLE JUSTICE K. T. THOMAS  
HON'BLE JUSTICE S. C. AGRAWAL

Civil Appeal No. 2971 of 1981 | 23-04-1997

This appeal by certificate of fitness granted by the Bombay High Court under section 261 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the judgment of the said High Court, dated January 16, 1979, in I.T.R. No. 25 of 1970.

The facts briefly stated are as follows :

During the course of a raid by the customs authorities cash amount of Rs. 47, 000 was found in the locker standing in the name of the assessee with the Punjab National Bank. After receiving the necessary information about the said recovery, the Income-tax Officer included the said amount of Rs. 47, 000 in the assessment of the assessee for the year 1956-57 under the head "Income from other sources". On appeal, the Appellate Assistant Commissioner held that the amount of Rs. 47, 000 should be treated as income for the assessment year 1957-58 and this amount was added by him to the income for the assessment year 1957-58. The Income-tax Appellate Tribunal held that the said amount could only be considered in the assessment year 1958-59 inasmuch as the amount was required to be considered as income from undisclosed sources. After the said decision of the Tribunal, the Income-tax Officer issued a notice under section 147 of the Act to the assessee in respect of the assessment year 1958-59 and on re-assessment he redetermined the income of the assessee for that year at Rs. 57, 085 which included the sum of Rs. 47, 000. The Appellate Assistant Commissioner upheld the contention of the assessee that section 147(a) could not be invoked in this case since all the materials were originally made available to the Income-tax Officer. The Appellate Assistant Commissioner was of the view that by reason of section 153(3) the time limit as provided in section 153(1) would not apply. The Appellate Assistant

Commissioner held that by reason of the provisions of section 297(2)(k) of the Act the direction given by the Tribunal must be deemed to be one given under a comparable or equivalent section of the Act. The Tribunal, however, held that the provisions of section 297(2)(k) could not be invoked and Explanation 2 to section 153(3) could not be pressed into service. The Tribunal referred the question of law to the High Court for opinion. The said question was reframed by the High Court in the following terms (page 740) :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that Explanation 2 to section 153 of the Income-tax Act, 1961, was not applicable ?" \*

Agreeing with the Tribunal, the High Court has held that section 297(2)(d)(ii) of the Act was not applicable since the order of the Tribunal was passed under the provisions of the Indian Income-tax Act, 1922, and that Explanation 2 to section 153(3) could not be pressed into service. The said view of the High Court is no longer good law in view of the decision of this court in Mahadeo Prasad Rais (Decd. by Lrs.) v. ITO. In that case this court has construed the provisions of section 297(2)(d)(ii) and section 297(2)(k) of the Act in the context of section 150(1) of the Act and has held that section 150(1) would be applicable in respect of the orders passed by the Tribunal under the Indian Income-tax Act, 1922, on a liberal interpretation of section 297(2)(d)(ii) and section 297(2)(k). In that case this court has taken note of the impugned judgment of the High Court as well as the judgments of the Allahabad, Calcutta and Bombay High Courts wherein a contrary view was taken and has affirmed the judgment of the Allahabad High Court. The present case is fully covered by the judgment of this court in Mahadeo Prasad Rais (Decd. by Lrs.) v. ITO. For the reasons given in the said judgment the appeal is allowed, the impugned judgment of the High Court is set aside and the question referred, as reframed by the High Court, is answered in the negative, i.e., in favour of the Revenue and against the assessee. No order as to costs.