

SUPREME COURT OF INDIA

Prakash Chand Nahta

Vs.

Union of India

(S.P. Bharucha, S.S. Quadri and N. S. Hegde JJ.)

02.08.2000

ORDER

1. The following questions were before the High Court (see [1996] 220 ITR 277), in a reference under Section 256(1) of the Income-tax Act, 1961 (page 278):

"(1) Whether in view of the fact that Mohd. Rashid, proprietor of Mohd. Mohammad Rashid and Co., Jabalpur, was not summoned in evidence by the Income-tax Officer, in spite of the request made by the applicant under Section 131, in this behalf, there is justification in law to use the evidence recorded behind the back of the applicant without affording an opportunity to him to cross-examine the said Mohd. Rashid and drawing an adverse inference ?

(2) Whether the assessment is vitiated in law as the Inspecting Assistant Commissioner (Assessment) has not given reasonable opportunity of being heard and failed in summoning the witnesses as requested under Section 131 and his failure to consider the affidavit of Mohd. Rashid filed along with the written reply submitted on December 31, 1985 ?"

2. The High Court answered the questions against the assessee. It is clear from the judgment of the High Court that it proceeded upon the basis that the questions that were before it arose upon an order passed by the Tribunal in a rectification application. This is evidenced by, for example, the following statements in the judgment (page 280), "But that is a matter not of rectification . . . This is not a matter in which an apparent error is involved, but is a matter more of merit and cannot be rectified within the scope of rectification .. In the present case, therefore, whether the Tribunal should have acted upon the statement of Mohd. Rashid or it should have acted upon the subsequent affidavit filed by Mohd. Rashid in favour of the assessee is not within the zone of apparent error on record but is a matter more of merits of the case and, therefore, beyond the scope of rectification." Reference has also been made specifically to Section 254 and the decisions which are referred to by the High Court are all decisions that relate to rectification proceedings.

3. We have looked at the reference application under Section 256(1) that was made by the assessee and it is clear therefrom that what was sought to be referred were questions that arose out of the principal order of the Tribunal that had been passed on January 11, 1988. The High Court, therefore, misdirected itself and its order must be set aside.

4. The civil appeal is allowed. The order under challenge is set aside. The reference (M.C.C. No. 668 of 1991) is restored to the file of the High Court of Madhya Pradesh, sitting at Jabalpur, to be

decided afresh, having due regard to what is stated in this order. This shall be done expeditiously.

5. No order as to costs.