

SUPREME COURT OF INDIA

Commissioner of Income-Tax

Vs.

Sri Ramdas Motor Transport Ltd.

(S.P. Bharucha, Y.K. Sabharwal and Ashok Bhan JJ.)

23.08.2001

ORDER

1. The Revenue moved the High Court under Section 256(2) of the Income-tax Act, 1961, seeking a reference of eleven questions. The High Court (see [1999] 238 ITR 177), disposed of the application by a lengthy judgment that concluded by saying that no question of law was found. Among the eleven questions, were questions Nos. 3 and 4, which read thus (page 179):

"3. Whether the interpretation of the Appellate Tribunal as regards the scope and ambit under Section 132(4) is correct ?

4. Whether the Appellate Tribunal is justified in holding that Explanation to Section 132(4) is prospective in nature ; though the said Explanation laid down only rule of evidence and in that sense it is only procedural in nature ?"

2. In this appeal by the Revenue, leave has been granted restricted to questions Nos. 3 and 4.

3. As will be seen, these questions deal with the scope and ambit of Section 132(4) of the Act and the Explanation thereto and whether or not it is prospective in nature. In its long judgment declining to call for a reference, the High Court has, in effect, interpreted Section 132(4) and its Explanation,-which it could not have done without calling for a reference of the concerned questions and hearing it. On this short ground alone, the judgment and order under challenge needs to be set aside.

4. Mr. K. Parasaran, learned counsel for the assessee, submitted that instead of sending the matter back to the High Court for considering these questions on reference, we should deal with them ourselves because there was a difference of opinion among certain High Courts with regard of the provisions of Section 132(4) and the Explanation thereto. We are disinclined to do so. The High Court itself must consider the questions and, in doing so, the judgments of the High Courts that deal with Section 132(4) and its Explanation.

5. Should the High Court come to the conclusion that the Explanation to Section 132(4) is retrospective in nature, it shall consider whether the Tribunal was right in the order that it passed, having regard to the evidence on record.

6. The civil appeal is allowed. The judgment and order under challenge is set aside. The application of the Revenue for a reference under Section 256(2) is allowed in so far as it relates to questions Nos. 3 and 4 aforementioned. The Tribunal shall refer those questions to the High Court for consideration, after drawing up a statement of case.

7. No order as to costs.