sbw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.906 OF 1998

Ganapati Panchayatan Sansthan Trust ..Applicant
-*Versus*-
The Commissioner of Income Tax, Pune ..Respondent

....

Mr. K. B. Bhujle for the Applicant.
Mr. Suresh Kumar for the Respondent.

....

CORAM: S. C. DHARMADHIKARI &
A. K. MENON, JJ.

DATE :- 23rd APRIL, 2015.

P.C.:

This reference seeks answer and opinion on the following question of law:-

> "Whether on the facts and in the circumstances of the case, the Tribunal erred in holding that the assessee-trust was assessable to income tax according to the provisions of section 164 and not under section 161 of the Income Tax Act, 1961?"

2] The reference is at the instance of the assessee. The reference arises out of the order passed by the Tribunal in Income Tax Appeal Nos.419 & 420/PN/1975-76 pertaining to the Pune Bench of the Tribunal. They were decided on 16th October, 1976. The assessment years are 1970-71 and 1971-72.

3] The assessee is a trust but private. The assessee was assessed for the purpose of income tax but the dispute was whether it could be assessed either under section 161 or under section 164 of the Income Tax Act, 1961. These two sections are similar to section 21(1) and 21(4) of the Wealth Tax Tax, 1957.

4] The Tribunal passed a consolidated order and held that the liability of the assessee in Wealth Tax was under section 21(4) of the said Wealth Tax Act and not under section 21(1) of that Act.

5] This decision of the Tribunal was available when the assessee's appeals for the above assessment years came up for disposal. Therefore, the findings in the Wealth Tax appeals were applied by the Tribunal while dealing with and deciding the income tax appeals and it held that the assessee was to be assessed under section 164 of the Income Tax Act and not under section 161 thereof. As far as the wealth tax appeal was concerned, the order in relation thereto gave rise to a question of law which was referred by the Tribunal to the opinion of this Court. Since that question in the wealth tax appeal was identical, even in income tax appeal, the reference has been made and on the above question of law.

6] When this reference was called out for hearing and final disposal, counsel for the parties fairly stated that Wealth Tax Reference No.30/1978 decided by this Court on 18/19th April, 1991 would apply in this case. Meaning thereby, the questions of law can be answered in terms of the decision rendered by this Court in the wealth tax reference.

7] The provisions of law being identical and even the impact, it was was held that the assessee could not be assessed under section 21(4) of the Wealth Tax Act but under section 21(1) thereof, then, even the present reference will have to be answered accordingly. It is answered in favour of the assessee and against the revenue by holding that the assessee's income for chargeability to tax under the Income Tax Act, 1961 would have to be assessed under section 161 of the Income Tax Act, 1961 and not under section 164 thereof. This being the question of law and common in both matters, the reference is disposed of accordingly. The papers now be forwarded to the Tribunal for all consequential steps and in accordance with law.

(A. K. MENON, J.) **(S. C. DHARMADHIKARI, J.)**