(1991) 01 AHC CK 0046

In the Allahabad High Court

Case No : Income-tax Application No. 246 of 1990

Atma Prakash APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 23-01-1991

Acts Referred:
Income Tax Act, 1961 — Section 139(4), 146, 256

Citation : (1991) 191 ITR 567

Hon'ble Judges : B.P. Jeevan Reddy, C.J;G.D. Dubey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.P. Jeevan Reddy, C.J.—By this application u/s 256(2) of the Income Tax Act, 1961, the assessee is asking this court to ask the Tribunal to state the following three questions :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming the rejection of application u/s 146 of the Income Tax Act, 1961, on the simple reason that the return was not filed before the date of hearing for application u/s 146 of the Income Tax Act, whereas the return was filed on June 11, 1984, before the date of hearing ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal Bench have correctly interpreted the provisions of Section 139(4) of the Income Tax Act, 1961, whereas the provisions have been amended with effect from April 1, 1989, and shall also be applicable to the earlier assessment year ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in refusing to entertain the ground regarding order u/s 144 of the Income Tax Act, though the same arose out of the order of the Appellate Assistant Commissioner of Income Tax ?"

2. Having heard counsel for the assessee, we are not satisfied that any of these

three questions deserves to be so directed. Only questions Nos. 1 and 2 are pressed before us. But, as pointed out by the Tribunal in its order u/s 256(1), question No. 1 is based upon a wrong assumption of fact. The Tribunal never stated that since the return was not filed before the date of filing or hearing of the application u/s 146 of the Act, the order rejecting the said application is proper. What the Tribunal said was that the assessee could not assign any satisfactory explanation for not filing the return before the making of the assessment. Question No. 1 cannot, therefore, be referred.

3. So far as question No. 2 is concerned it cannot be referred for more than one reason. Firstly, it does not arise from the order of the Tribunal, as pointed out by the Tribunal in its order u/s 256(1) of the Act. Secondly, Section 139(4) can have no conceivable application to the facts of this case when, admittedly, the return was not filed before the making of the assessment but was filed thereafter.

4. The Income Tax application is, accordingly, dismissed. No costs.

