(1988) 08 MP CK 0055

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 138 of 1987

Chetanswaroop Omprakash and Co. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 04-08-1988

Acts Referred:
Income Tax Act, 1961 — Section 133A, 184, 185, 254, 256(2)

Citation : (1989) 175 ITR 247 : (1988) 40 TAXMAN 230

Hon'ble Judges : G.G.Sohani, Acting C.J.;R.K. Verma, J

Bench : Division Bench

Advocate : Chaphekar and Samvatsar, for the Appellant; R.C. Mukati, for the Respondent

Judgement

G.G. Sohani, Actg. C.J. 1. This is an application u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. The material facts giving rise to this application, briefly, are as follows :

The assessee is a partnership firm and is assessed in the status of a registered firm. The assessment year in question is 1979-80. On the basis of information gathered during a survey conducted u/s 133A of the Act in the premises of the applicant-assessee and in the premises of the two other firms, Iqbal & Co., Unhel, and Kamalkishore & Co., Khachrod, the Income Tax Officer came to the conclusion that the aforesaid two firms were not genuine and hence their income was liable to be included in the income of the applicant. Aggrieved by the order passed by the Income Tax Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) partly allowed the appeal. Aggrieved by the order passed by the Commissioner of Income Tax (Appeals), the assessee as well as the Revenue preferred appeals before the Tribunal. The Tribunal decided these appeals along with other appeals arising out of the assessment proceedings of Iqbal & Co. and Kamalkishore & Co. The Tribunal, by its common order dated May 8, 1986, remanded the case to the Commissioner of Income Tax (Appeals) directing him to restore the appeal to its file and to redetermine the issues in accordance with law in the light of the observations made by the Tribunal. Aggrieved by the order passed by the Tribunal, the assessee sought a reference but as the application made by the assessee in that behalf was rejected, the assessee has filed this application.

2. Having heard learned counsel for the parties, we have come to the conclusion that the following question of law does arise out of the order passed by the Tribunal :

"Whether, on the facts and in the circumstances of the case, the Tribunal, in view of the grounds of appeal taken before it, erred in setting aside the entire order passed by the Commissioner of Income Tax (Appeals) ?"

3. The application is, therefore, allowed. The Tribunal is directed to state the case and to refer the aforesaid question of law to this court for its opinion. In the circumstances of the case, parties shall bear their own costs of this application.