(1992) 03 BOM CK 0044

In the Bombay High Court

Case No : Income-tax Application No. 565 of 1991

Commissioner of Income Tax APPELLANT

Vs

A.A. Baniyan RESPONDENT

Date of Decision : 01-03-1992

Acts Referred:

Income Tax Act, 1961 — Section 256(2)

Citation : (1992) 106 CTR 276 : (1992) 197 ITR 717

Hon'ble Judges : Sujata V. Manohar, J;B.P. Saraf, J

Bench : Division Bench

Advocate : Dr. V. Balasubramanian, for the Appellant; K.B. Bhujle, for the Respondent

Judgement

Mrs. Sujata Manohar, J.—This is an application u/s 256(2) of the Income Tax Act, 1961, praying that we should direct the Tribunal to raise the following question of law and refer it to us for determination :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that 40 per cent. of the bonus commission (incentive) which had been received by the assessee as per terms of employment should be deducted in the computation of the assessee''s income ?"

2. The assessee is a Development Officer in the Life Insurance Corporation of India. Apart from salary and allowance, he had also received, during the relevant assessment years, incentive bonus commission. This has been held to be the professional income of the assessee for these assessment years. This finding is not under challenge. The assessee, however, claimed that 40 per cent. of the incentive commission received by him should be allowed as a deduction for the probable and likely expense for earning the incentive bonus. The Tribunal has accepted the assessee''s claim and directed the Income Tax Officer to allow 40 per cent. of the incentive bonus commission as a deduction. The deduction so allowed is based on a finding of fact as to the quantum of expenses likely to have been incurred by the assessee for the purpose of earning the incentive bonus

commission and hence no question of law arises which can be required to be referred to us. The rule is, therefore, discharged.

3. No order as to costs.

