

(1996) 01 MP CK 0020

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 510 of 1995

Commissioner of Income Tax

APPELLANT

Vs

Ashok Pal Daga

RESPONDENT

Date of Decision : 11-01-1996

Acts Referred:

Income Tax Act, 1961 — Section 256(2)

Citation : (1996) 220 ITR 435 : (1996) 88 TAXMAN 361

Hon'ble Judges : S.B. Sakrikar, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : D.D. Vyas, for the Appellant;

Judgement

A.R. Tiwari, J.—The Commissioner of Income Tax, Bhopal, has filed this application u/s 256(2) of the Income Tax Act, 1961 (for short, "the Act"), seeking a direction to the Income Tax Appellate Tribunal, Indore, to state the case and refer the proposed question of law, as extracted below, to this court arising out of its order dated July 8, 1994, passed in I. T. A. Nos. 288 and 781/(Ind) of 1992 :

"Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that the assessee did not earn income from arranging hawala or bogus entries of credit for a third party ?"

2. Briefly stated, the facts of the case are that the non-applicant-assessee furnished a return on March 4, 1990. The assessment was made u/s 143(3) of the Act on March 17, 1992. The business and residential premises of the assessee were searched in January, 1989. The premises of certain other assesseees connected with this assessee were also searched. The first appeal was decided on September 1, 1992. In the course of search, extensive material was recovered from the residence of the assessee. This material manifested that the creditors were not genuine and were only name-lenders. The Assessing Officer rejected the explanation of the assessee and passed the order. The additions

were, however, set aside in the first appeal. The Tribunal found it fit to delete the additions. Aggrieved by the order of the Tribunal, the applicant filed an application u/s 256(1) of the Act. This application, registered as R. A. No. 98/ (Ind) of 1994 was rejected on December 12, 1994. Thereafter, the applicant has filed this application u/s 256(2) of the Act.

3. The Tribunal declined to make reference on the undernoted conclusion :

"The abovesaid findings of the Tribunal are based on consideration and appreciation of the evidence available on record. In our opinion, such findings are pure findings of fact and do not give rise to a question of law."

4. On a perusal of the question, we find that the conclusion of the Tribunal is based on appreciation of facts. Whether the entries of the creditor are bogus or not and whether the assessee earned any income from arranging hawala or not, are demonstrably questions of fact and cannot be said to give rise to referable questions of law.

5. As held in Commissioner of Income Tax (Central), Calcutta Vs. Ashoka Marketing Ltd., and Commissioner of Income Tax, Andhra Pradesh Vs. Kotrika Venkataswamy and Sons, , where the Tribunal reaches a conclusion in regard to the aforesaid aspects, which is one of fact, it does not give rise to any question of law as such.

6. Counsel for the applicant is, thus, unable to show as to how the proposed question is a question of law. The conclusion is based on appreciation of facts and is not shown to be infirm or perverse.

7. In the result, we find that the application is devoid of merit. Accordingly, we decline admission and reject the application summarily.