(2000) 10 RAJ CK 0021

In the Rajasthan High Court

Case No : .I.T. Reference No. 92 of 1998

Commissioner of Income Tax APPELLANT

Vs

Ashutosh Pitty RESPONDENT

Date of Decision : 20-10-2000

Acts Referred:
Income Tax Act, 1961 — Section 143(1), 256(2), 263

Citation : (2001) 169 CTR 552 : (2001) 250 ITR 450 : (2002) 120 TAXMAN 269

Hon'ble Judges : A.R. Lakshmanan, C.J;Rajesh Balia, J

Bench : Division Bench

Advocate : Sandeep Bhandawat, for the Appellant; Sanjeev Johari, for the Respondent

Judgement

AR. Lakshmanan, C.J.—Heard Mr. Sandeep Bhandawat and Mr. Sanjeev Johari for the respective parties.

2. This reference application has been filed by the Commissioner of Income Tax, Jodhpur, u/s 256(2) of the Income Tax Act, 1961, against the order dated February 9, 1998, passed by the Income Tax Appellate Tribunal, Jaipur.

3. The assessee is a Development Officer employed with the Life Insurance Corporation of India. He has returned an income of Rs. 1,08,230 which was processed u/s 143(1)(a) on November 5, 1990, without- making any adjustment of the declared income. The said order was set aside by the Commissioner of Income Tax by order u/s 263 of the Income Tax Act with the direction to add back the incentive bonus of Rs. 1,82,692 and Rs. 30,072 out of additional conveyance allowance.

4. The Tribunal has quashed the order passed by the Commissioner of Income Tax on the ground that such adjustments are not permissible u/s 143(1)(a) of the Income Tax Act. The Tribunal has also observed that though intimation u/s 143(1)(a) is an order which could be revised u/s 263 but in the present case the assessment process is not erroneous and prejudicial to the interests of the

Revenue. The Department, under such circumstances, referred the following questions of law u/s 256(1) of the Act for the opinion of this court. The questions of law referred read thus :

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is legally justified in holding that order u/s 143(1)(a) passed by the Assessing Officer was not erroneous and prejudicial to the interests of the Revenue and thereby quashing the order u/s 263 passed by the Commissioner of Income Tax ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that adjustments by way of disallowance of claim of expenses on incentive bonus and non-exempt portion of additional conveyance allowance, were outside the scope of Section 143(1)(a) of the Act ?"

5. We are of the opinion that the above questions of law do arise for consideration and, therefore, we direct that the Tribunal was not justified in rejecting the application for reference.

6. We, therefore, direct the Tribunal to refer the above two questions of law for consideration by this court.

