(1989) 08 AHC CK 0045

In the Allahabad High Court

Case No : Income-tax Application No. 43 of 1989

Commissioner of Income Tax APPELLANT

Vs

Brij Bala RESPONDENT

Date of Decision : 03-08-1989

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

Citation : (1989) 180 ITR 427

Hon'ble Judges : K.C. Agrawal, Acting C.J.;R.K. Gulati, J

Bench : Division Bench

Advocate : R.V. Gupta, for the Respondent

Judgement

1. Having heard counsel for the parties, we are satisfied that the following two questions are statable questions of law :

" (1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that there were no materials before the Commissioner of Income Tax to justify his finding that the assessment made u/s 143(1) was erroneous in so far as it was prejudicial to the interests of the Revenue ?

(2) Whether the Tribunal''s order is wrong on facts and in law in taking into consideration incorrect facts and facts not relevant to the case and in ignoring relevant facts and findings in the order under appeal ?"

2. Therefore, we direct the Income Tax Appellate Tribunal to draw up a statement of the case with regard to the aforesaid questions and submit the same to this court for its opinion.

3. The case relied upon by the assessee is distinguishable as, in the instant case, the Commissioner had found that there was no evidence on record to prove that the assessee was actually doing any business ; that it was to accommodate Hari Om Agrawal to explain an investment of rupees two lacs that the assessee furnished the return, got the assessment completed and paid the taxes. The

Tribunal upset the order of the Commissioner without recording proper findings on the above aspects of the matter which require consideration.

