(1996) 03 AHC CK 0014

In the Allahabad High Court

Case No : Income-tax Reference No. 282 of 1979

Commissioner of Income Tax APPELLANT

Vs

Dasi Ram Sri Krishna RESPONDENT

Date of Decision : 07-03-1996

Acts Referred:

Citation : (1996) 221 ITR 534

Hon'ble Judges : M. Katju, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : None, for the Respondent

Judgement

1. This Income Tax reference has been made to us u/s 256(1) of the Income Tax Act, 1961, referring the following question for our opinion :

" Whether, on the facts and circumstances of the case, the sum of Rs. 18,022 was allowable as a deduction in computing the business income of the assessee ?"

2. We have heard learned standing counsel for the Department, None appears for the assessee, although he has been served with notice.

3. The assessee is a registered firm and the relevant assessment year is 1972-73. The assessee does business of manufacture and sale of kolhus, etc. It claimed, inter alia, deduction of Rs. 18,022 on account of liability for sales tax in respect of certain sales made to dealers of Bombay. The Income Tax Officer rejected his claim and his order was affirmed by the Appellate Assistant Commissioner. The Tribunal, however, held that the claim for sales tax was allowable since the assessee was following the mercantile system of accounting.

4. We are of the opinion that since the Appellate Assistant Commissioner has held that there is no genuine sale hence the question of allowing sales tax does not arise. The Tribunal did not advert to this aspect of the matter and instead it held that since the assessee was following the mercantile system of accounting

the claim was allowable.

5. In our opinion, since the finding that there were no genuine sales has not been disturbed by the Tribunal, hence, there was no question of allowing the claim of sales tax. Whether the assessee was following the mercantile system or not was not relevant at all when there were no sales.

6. Hence, we answer the question in the negative, i.e., in favour of the Department and against the assessee.

7. No order as to costs.

