(1986) 07 MP CK 0049

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 327 of 1984

Commissioner of Income Tax — APPELLANT

Vs

Ganesh Stores — RESPONDENT

Date of Decision : 04-07-1986

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

Citation : (1986) 56 CTR 8 : (1986) 162 ITR 493

Hon'ble Judges : R.K. Verma, J;G.G. Sohani, J

Bench : Division Bench

Advocate : R.C. Mukati, for the Appellant; K.R. Mandovra, for the Respondent

Judgement

Sohani, J.—In pursuance of the order passed by this court u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), in Misc. Civil Case No. 84 of 1982, the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the balance amount of compensation received by the assessee would be legally taxable in the year when the award was made ? "

2. The material facts giving rise to this reference, briefly, are as follows :

The assessment year in question is 1972-73. At the material time, the assessee was deriving income from a works contract entered into by it with the Western Railway. On February 29, 1972, that contract was terminated by the Railway authorities. The assessee, therefore, lodged a claim with the arbitrator for compensation. By an award dated May 12, 1975, the claim of the assessee for compensation for breach of contract was upheld. Before the Income Tax Officer, the assessee contended that the amount received by it by way of compensation was not taxable in the assessment year in question. This contention was rejected by the Income Tax Officer. On appeal, the Appellate Assistant Commissioner held that the amount of compensation awarded to the assessee by way of damages could not be taxed in the relevant assessment year. On further appeal before the Tribunal, the Tribunal upheld the view taken by the Appellate Assistant Commissioner. The application moved by the Revenue for making a reference to this court was rejected by the Tribunal. The Revenue, therefore, moved an application before this court u/s 256(2) of the Act which was allowed. That is bow the aforesaid question of law has been referred to this court for its opinion.

3. It has been found that the assessee maintains accounts on the mercantile basis and that the amount of compensation in question was awarded to the assessee in respect of its claim for unliquidated damages. It is well settled that in cases of claims for unliquidated damages, no debt is due until the amount is ascertained or admitted. In the instant case, the claim made by the assessee against the Railways in respect of unliquidated damages was ascertained on May 12, 1975, when the award was made. Therefore, as held by this court in TRIKAMLAL Vs. COMMISSIONER OF Income Tax, M.P., the right to receive the amount of damages accrued to the assessee on May 12, 1975. In our opinion, therefore, the Tribunal was justified in holding that the amount of compensation in question received by the assessee was legally taxable when the award was made.

4. Our answer to the question referred to this court is, therefore, in the affirmative and against the Revenue. In the circumstances of the case, parties shall bear their own costs of this reference.