
(1978) 04 AHC CK 0061

In the Allahabad High Court

Case No : Income-tax Reference No. 60 of 1975

Commissioner of Income Tax

APPELLANT

Vs

Ganesh Trading Co.

RESPONDENT

Date of Decision : 03-04-1978

Acts Referred:

Income Tax Act, 1961 — Section 256, 40A, 40A(3)

Citation : (1979) 117 ITR 975

Hon'ble Judges : Satish Chandra, C.J;K.N. Goyal, J

Bench : Division Bench

Advocate : Ashok Gupta, for the Appellant; R.S. Dhawan, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, C.J.—The Tribunal has referred to us two questions, one at the instance of the Commissioner, while the second question is at the instance of the assessee. The assessee, however, did not make any application u/s 256(1) of the I.T. Act. It made a prayer for reference of the second question at the hearing of the application filed by the Commissioner. In our view, the Tribunal had no jurisdiction to refer a question at the instance of a party which has not applied for it. The second question, hence, is returned unanswered.

2. So far as the first question is concerned it stands decided by a Bench of this court in U.P. Hardware Store Vs. Commissioner of Income Tax, . It was held that there was no justification for accepting the plea that the word "expenditure" used in Section 40A(3) should be restricted to overhead expenses enumerated in Sections 30 to 43A. The word "expenditure" was of wide import. It would cover the expenses to be taken into account while determining the gross profit. The gross profit is determined by the difference between the opening stock and the purchases on the one hand and the closing stock and the sales on the other. The payments made for purchases would also be covered by the word "expenditure" and such payments could be disallowed if they are made in cash in sums exceeding Rs. 2,500.

3. In view of this decision, we answer the first question referred to us in the negative, in favour of the department and against the assessee. The Commissioner will be entitled to costs which are assessed at Rs. 200.