**(1995) 02 RAJ CK 0047**

**In the Rajasthan High Court**

**Case No :** .I.T. Reference Application No. 30 of 1994

Commissioner of Income Tax APPELLANT

Vs

Ghindmal Kauromal RESPONDENT

**Date of Decision :** 09-02-1995

**Acts Referred:**
Income Tax Act, 1961 — Section 132, 256

**Citation :** (1995) 216 ITR 170 : (1995) 81 TAXMAN 287

**Hon'ble Judges :** Y.R. Meena, J;V.K. Singhal, J

**Bench :** Division Bench

**Advocate :** G.S. Bafna, for the Appellant; P.K. Kasliwal, for the Respondent

## Judgement

Y.R. Meena, J.—By this application u/s 256(2) of the Income Tax Act, 1961, the Commissioner of Income Tax has prayed to direct the Tribunal to refer the following question of law for the opinion of this court :

"Whether, on the facts and in the circumstances of the case and in law, the Tribunal was correct in holding that the document marked as annexure-C-23 did not belong to the assessee-firm and, consequently, deleting the addition of Rs. 48,378 and Rs. 41,000 notwithstanding the fact that the document marked as annexure-C-23 was found and recovered from the business premises of Messrs. Ghindmal Kauromal ?"

2. The assessee is a registered firm which carried on the business of sale of potatoes and onions. The assessee filed a return on June 28, 1985, declaring a total income of Rs. 52,070. On September 5, 1985, a search and seizure operation was conducted by the Department on the business premises of the firm and also residential premises of the partner. On the basis of the documents seized at the time of search and seizure, the total income of the assessee was assessed at Rs. 2,68,146. Finally, the Tribunal found that the document annexure-C-23 did not belong to the assessee-firm and, consequently, deleted the addition of Rs. 46,378 and Rs. 41,000.

 

3. We have gone through the order of the Income Tax Appellate Tribunal and also the provisions of Section 132(4A) and also the document annexure-C-23. In our opinion, prima facie, the finding of the Tribunal regarding ownership and construction of the document gives rise to the aforesaid question of law.

4. Consequently, we direct the Income Tax Appellate Tribunal to refer the aforesaid question of law for the opinion of this court.

 