

(1999) 09 RAJ CK 0005
In the Rajasthan High Court
Case No : IT RefCase No"s. 23 and 25 of 1999

Commissioner of Income Tax

APPELLANT

Vs

Heera Lal Bhat

RESPONDENT

Date of Decision : 24-09-1999

Acts Referred:

Income Tax Act, 1961 — Section 256(2), 40, 44AD(5)

Citation : (2003) 184 CTR 554 : (2003) 131 TAXMAN 257

Hon'ble Judges : N.N. Mathur, J;Amaresh Kumar Singh, J

Bench : Division Bench

Advocate : Sandeep Bhandawat, for the Appellant; Suresh Ojha, for the Respondent

Judgement

N.N. Mathur, J.—Heard Mr. Sandeep Bhandawat for the Revenue applicant and Mr. Suresh Ojha for the respondent-assessee.

2. Both these applications u/s 256(2) of the IT Act, 1961, hereinafter referred to (as the Act of 1961), which pertain to the asst. yr. 1994-95, have been filed at the instance of the Revenue seeking mandamus to the Tribunal for drawing up statement of case and to refer the following common question for the opinion of this Court :

"Whether on the facts and in the circumstances of the case, the Tribunal was correct in holding that in the case of a firm where profit is computed by applying net profit rate, deduction for salary and interest is separately allowable u/s 40(b) of the IT Act, when in fact Section 40(b) does not provide for any deduction, but places ceiling on the deduction allowable ?"

3. It is submitted by Mr. Sandeep Bhandawat, learned counsel for the Department that on the same point, the Department has already filed Reference Application u/s 256(2) of the Act, which has been registered as CIT v. Jain Construction Co. (D.B. IT Case No. 12 of 1998). We have decided the said reference today. Thus, for the reasons and conclusions arrived at in the decision

rendered by us in the said Reference, no question of law arises out of the order of the Tribunal.

4. It is next submitted by the learned counsel for the Revenue Mr. Bhandawat that the Tribunal has erred in law in not appreciating the fact that the proviso to Section 44AD(2), which allows deduction of salary and interest paid to its partners, refers to computation of income made u/s 44AD(1) whereas the assessment was finalised u/s 44AD(5). The proviso has no application to the assessment completed u/s 44AD(5).

5. It is submitted by Mr. Ojha that reference to the aforesaid provision is not relevant as the said question was not raised before the Tribunal by the Revenue. He has also submitted that Sub-section (5) of Section 44AD is no bar for allowing deduction as claimed by the respondent.

6. In view of this submission made by Mr. Ojha, the contention raised by Mr. Bhandawat, learned counsel for the Revenue, cannot be entertained.

7. No referable question of law arises out of the order of the Tribunal and, accordingly, both the applications filed u/s 256(2) at the instance of the Revenue are rejected.