

(1985) 07 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Case No. 123 of 1977

Commissioner of Income Tax

APPELLANT

Vs

Ishwar Prakash and Bros.

RESPONDENT

Date of Decision : 08-07-1985

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 256(2)

Citation : (1986) 159 ITR 843 : (1986) 26 TAXMAN 34

Hon'ble Judges : S.P. Goyal, J;G.C. Mittal, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajay Mittal, for the Appellant; D.K. Gupta and Hemant Kumar Gupta, for the Respondent

Judgement

Gokal Chand Mittal, J.—M/s. Ishwar Prakash and Bros, (hereinafter called the assessee) carried on business in purchase and sale of milk cans made of aluminium alloy. Rupees 36,000 was paid as commission to M/s. Shiv Shankar Metal Works, Jagadhri, in pursuance of an agreement dated July 17, 1970, during the previous year, which ended on March 31, 1971. M/s. Shiv Shankar Metal Works were to help the assessee in procuring orders from various Government and semi-Government departments, providing designs for the cans, in getting the goods finished and packed and in securing the payments for the goods supplied. The Income Tax Officer did not accept the payment of Rs. 36,000 and after disallowing the same, added the amount to the income of the assessee. Feeling aggrieved, the matter was taken in appeal before the Appellate Assistant Commissioner where the assessee remained unsuccessful. In further appeal, the Income Tax Appellate Tribunal granted relief to the assessee and on appreciation of evidence and facts of the case, recorded a finding that a valid contract dated July 17, 1970, had been arrived at between the assessee and M/s. Shiv Shankar Metal Works and that the sum of Rs. 36,000 was genuinely paid to that concern and was not an effort to divert the income of the assessee to reduce the tax liability. It was also found that the partners of M/s. Shiv Shankar Metal Works were not related to the members of the assessee concern. Accordingly, by order

dated August 20, 1976, the appeal was allowed and the necessary relief was granted to the assessee. Since the Tribunal refused to refer the case to this court on an application u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") on the finding that no question of law arose from its order, the Commissioner of Income Tax has filed an application u/s 256(2) of the Act in this court.

2. After hearing the learned counsel for the parties and on perusal of the record, we are of the opinion that no question of law arises from the order of the Tribunal and pure questions of fact are involved, which, on appreciation of evidence, have been answered by the Tribunal in favour of the assessee. Since the learned counsel appearing for the Department has not been able to point out any question of law which may arise from the order, we have no option but to dismiss the application leaving the parties to bear their own costs and we order accordingly.