(2006) 04 GUJ CK 0010

In the Gujarat High Court

Case No : Income Tax Reference No. 212 of 1995 & Income Tax Reference No. 287 of 1995

Commissioner of Income Tax APPELLANT

Vs

Jayantilal D. Patel RESPONDENT

Date of Decision : 21-04-2006

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 60

Citation : (2007) 212 CTR 271

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Manish R Bhatt, J, for the Appellant;

Final Decision : Disposed Off

Judgement

H.N. Devani, J.—The Income Tax Appellate Tribunal, Ahmedabad Bench SA has referred the following two questions u/s 256(1) of the Income Tax Act, 1961 (the Act) at the instance of Commissioner of Income Tax.

[1] Whether, the Appellate Tribunal is right in law and on facts in directing the Income Tax Officer to exclude 50% share of profit of Biren Nandish Trust from the income of the assessee?

[2] Whether, the Appellate Tribunal is right in law and on facts in holding that the provisions of Section 60 of the Income Tax Act cannot be invoked.

2. The assessment year is 1983-84 and the corresponding accounting period is Samvat Year 2038.

3. Heard Mr.Manish R. Bhatt, the learned senior standing counsel for the applicant. Though served, there is no appearance on behalf of the respondent assessee.

4. As can be seen seen from the impugned order dated 26th September, 1991 passed by the Tribunal, the Tribunal has merely followed its earlier decision in

assessee''s own case for assessment years 1979-80 to 1982-83. The aforesaid order of the Tribunal had been carried before this Court by way of Income Tax Reference No.212 of 1995, which has been decided by judgment and order of even date and the issue has been concluded in favour of the assessee and against the revenue. In the circumstances, it is not necessary to set out the facts and contentions in detail.

5. For the reasons stated in the judgment and order of even date passed in Income Tax Reference No. 212 of 1995, the questions referred are answered in the affirmative i.e. in favour of the assessee and against the revenue.

6. The reference stands disposed of accordingly. There shall be no order as to costs.

