(1977) 03 AHC CK 0046

In the Allahabad High Court

Case No : Income-tax Application No. 1427 of 1976

Commissioner of Income Tax — APPELLANT

Vs

Kohli Khan Bhandar — RESPONDENT

Date of Decision : 25-03-1977

Acts Referred:

Income Tax Act, 1961 — Section 256, 40A(3)
Income Tax Rules, 1962 — Rule 6DD

Citation : (1978) 111 ITR 419

Hon'ble Judges : R.M. Sahai, J;D.M. Chandrashekhar, J

Bench : Division Bench

Advocate : Deokinandan and Ashok Gupta, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Chandrashekhar, J.—This is an application by the revenue u/s 256 of the Income Tax Act, 1961, praying for a direction to the Income Tax Appellate Tribunal (hereinafter referred to as the Tribunal) to refer the following question to this court:

"Whether the Tribunal was justified and had material for holding that the assessee''s case was covered by the provisions of Rule 6DD(j) of the income tax Rules, 1962 ?"

2. The Tribunal has in para. 4 of its order taken into consideration several circumstances which according to the Tribunal would constitute exceptional and unavoidable circumstances as contemplated by Clause (j) of Rule 6DD of the Income Tax Rules, 1962. Hence, it cannot be said that there was no material before the Tribunal to come to its conclusion. The Tribunal has taken into account the following circumstances, namely, that this was the very first year of the business of the assessee, that the assessee was not known in the market and hence could not make payments by cheques, that in the fertilizer business supplies are made mostly against cash payments for sales made to consumers

and that because of the special nature of the business cash payment was unavoidable. The sufficiency of these materials cannot be gone into by this court in a reference u/s 256 of the Income Tax Act, 1961.

3. Hence, in our opinion, no question of law can be said to arise out of the order of the Tribunal and we reject this application.

