(1999) 01 MP CK 0011

In the Madhya Pradesh High Court

Case No : January 27, 1999. Income Tax Reference No. 92 of 1998.

COMMISSIONER OF Income Tax — APPELLANT

Vs

MAHAVEER DRILLING CO. — RESPONDENT

Date of Decision : 27-01-1999

Acts Referred:
Income Tax Act, 1961 — Section 154, 256

Citation : (2000) 241 ITR 733 : (2002) 123 TAXMAN 282

Hon'ble Judges : A. K. Mathur, C.J;B. A. Khan, J

Bench : Division Bench

Advocate : Pawnekar, for the Commissioner Goyal, for the assessee, for the Appellant;

Judgement

Heard learned counsel for parties. This is an application u/s 256(2) of the Income Tax Act, 1961, at the instance of the Revenue and the following questions of law have been framed for calling for the statement of the case :

"(1) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in confirming the order of the learned Deputy Commissioner (Appeals) cancelling the assessing officer''s order u/s 154 withdrawing investment allowance in respect of drilling machines even though the assessing officer''s action in rejecting such claim of investment allowance was in conformity with the ratio of a decision of the Supreme Court in the case of CIT v. N. C. Budharaja and Co. (1995) 204 ITR 412

(2) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in upholding cancellation of the rectification order passed by the assessing officer on 19-10-1992, despite the decision of the Supreme Court in the case of CIT v. N. C. Budharaja and Co. (1995) 204 ITR 412, on the ground that the aforesaid order of the Supreme Court was passed on 7-10-1995 and, hence,, it would not be applicable to the order dated 19-10-1992, of the assessing officer u/s 154 in the case ?"

It is a debatable matter whether after the decision of the apex court in the case of Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, , whether section 154 of the Income Tax Act can be invoked or not.

Let the statement of the case be called from the Tribunal on the aforesaid questions of law.

