(1992) 08 AHC CK 0048

In the Allahabad High Court

Case No : Income-tax Application No''s. 286 to 288 of 1991

Commissioner of Income Tax — APPELLANT

Vs

Mahendra Kumar Bansal — RESPONDENT

Date of Decision : 12-08-1992

Acts Referred:
Income Tax Act, 1961 — Section 256, 263

Citation : (1993) 200 ITR 335

Hon'ble Judges : R.K. Gulati, J;Om Parkash, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. These are three applications made by the Revenue u/s 256(2) of the Income Tax Act, 1961, requiring us to direct the Income Tax Appellate Tribunal to draw up a statement of the case in all the matters and refer the following common questions to this court for its opinion :

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is correct in law in setting aside the order of the Commissioner of Income tax passed u/s 263 holding that it was based on mere suspicion and surmises ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is legally correct in holding that the order of the Income Tax Officer was not erroneous and prejudicial to the interests of the Revenue ?

3. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is legally correct in drawing a conclusion that the Commissioner of Income Tax has failed to establish nexus between the stock found at the time of search and the assessment under appeal ?"

2. Inasmuch as, in our opinion, all the aforesaid questions are mixed questions of law and fact, we direct the Income Tax Appellate Tribunal, Delhi Bench ''B'', New

Delhi, to draw up a statement of the case for each assessment year and refer the aforementioned questions to this court for its opinion.

3. The applications are allowed. There shall be no order as to costs.