(1996) 01 RAJ CK 0044

In the Rajasthan High Court

Case No : .I.T. Reference Application No. 131 of 1995

COMMISSIONER OF Income Tax — APPELLANT

Vs

MANAKCHAND. — RESPONDENT

Date of Decision : 12-01-1996

Acts Referred:
Income Tax Act, 1961 — Section 256, 271

Citation : (1997) 226 ITR 959

Advocate : Sandeep Bhandawat, for the Appellant;

Judgement

Heard learned counsel for the petitioner.

The Revenue has moved this application u/s 256(2) of the Income Tax Act, 1961 (for short "the Act"), with the prayer that the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, may be directed to refer the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was legally justified in not deciding the issue raised in the grounds of appeal and in upholding the cancellation of penalty of Rs. 25,237 revised u/s 271(1)(a) on the other grounds that no tax was payable after the order of the Income Tax Appellate Tribunal in the quantum appeal whereas the order of the Tribunal is sub judice before the High Court u/s 256(2) ?"

An application u/s 256(1) of the Act was moved before the Tribunal with the prayer that the above noted question may be referred for the opinion of the High Court. The Tribunal dismissed that application filed by the Revenue on the ground that no referable question of law arises in the matter because while deciding the appeal, the Tribunal was of the opinion that penalty u/s 271(1)(a) could not be imposed according to the provisions of law as no tax was payable on the returned income of the assessee. The Tribunal, therefore, upheld the cancellation of the penalty. The Tribunal was also of the view that the case of the assessee is squarely covered by the decision of this court in Commissioner of Income Tax Vs. Builders Engineers Co., We are also, of the view that for the reasons stated in the order no referable question of law arises in this matter.

The application u/s 256(2) of the Act is, therefore, dismissed.

