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(1988) 03 AHC CK 0041

In the Allahabad High Court

Case No : Income-tax Reference No. 18 of 1985

Commissioner of Income Tax — APPELLANT

Vs

Modi Industries Ltd. — RESPONDENT

Date of Decision : 29-03-1988

Acts Referred:
Income Tax Act, 1961 — Section 256(2), 37

Citation : (1989) 178 ITR 404

Hon'ble Judges : V.K. Khanna, J;R.K. Gulati, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

V.K. Khanna, J.—This is an application u/s 256(2) of the Income Tax Act, 1961, praying that the Income Tax Appellate Tribunal, Delhi, be asked to draw up a statement of the case and to refer the four questions mentioned in paragraph 7 of the application for the opinion of this court.

2. Having heard learned counsel for the parties at some length, we are of the opinion that question No. (i) is covered by the decision of this court dated December 9, 1987, given in ITA No. 60 of 1986, pertaining to the assessment year 1971-72 between the same parties. As far as question No. (iii) is concerned the same is also covered by the decision of the Supreme Court in Commissioner of Income Tax (Central), New Delhi Vs. Bijli Cotton Mills (P.) Ltd., . As far as questions Nos. (ii) and (iv) are concerned, we are of the opinion that they are questions of law and do arise out of the Tribunal''s order.

3. On the facts and circumstances of the case, we are thus of the opinion that the following questions of law arise out of the Tribunal''s order :

"(i) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that a sum of Rs. 25,000 spent on the managing director''s house was an allowable deduction by ignoring the material fact that these expenses never related to the assessee''s business ?

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(ii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that a sum of Rs. 32,33,116 being the excess price realised by the assessee on sugar was not a revenue receipt in the hands of the assessee-company and, as such, not taxable in its hands ?"

4. We, accordingly, direct the Income Tax Appellate Tribunal to draw up a statement of the case and refer the questions of law indicated above for the opinion of this court.

5. The application is, thus, partly allowed. There shall be no order as to costs.

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