(1997) 07 MAD CK 0062

In the Madras High Court

Case No : Tax Case Petition No. 7 of 1997

Commissioner of Income Tax APPELLANT

Vs

Pragathi Computer (P) Ltd. RESPONDENT

Date of Decision : 14-07-1997

Acts Referred:

Income Tax Act, 1961 — Section 256(2)

Citation : (1997) 07 MAD CK 0062

Hon'ble Judges : K.P. Sivasubramaniam, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Thanikkachalam, J.—In this tax case petition, the Department requests this Court to direct the Tribunal to refer the following questions of

law, said to arise out of the order of the Tribunal for the opinion of this Court under s. 256(2) of the IT Act, 1961 :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that it cannot be said that the CIT(A) has

reviewed his earlier order and hence no interference by the Tribunal is called for with his orders ?

2. Having regard to the fact that the original order of the CIT(A) remitting the matter back to the AO with a direction to the assessee to produce

the proprietor of M/s. Meenarams before the AO for examining the genuineness of the commission payment has become final, whether the

Tribunal was right in law in upholding the subsequent orders of the CIT(A) who allowed the commission payment as genuine when the assessee

failed to produce the proprietor of M/s. Meenarams either before the AO or before the CIT(A) ?

2. A commission of Rs. 5,07,710 was stated to be paid to one M/s. Meenarams. The ITO directed the assessee to produce the said person. The

said person was not produced. Hence, the ITO came to the conclusion that this commission payment was not proved. On appeal, the first

appellate authority set aside the order passed by the ITO, on this aspect and remitted the matter for fresh disposal. In the consequential order

passed by the ITO, it was pointed out that the said person Meenarams was not produced. Therefore, again the addition was sustained. The first

appellate authority, after perusing the various records produced by the assessee, came to the conclusion that the commission payment of Rs.

5,07,710 to one Meenaram was proved. The first appellate authority also pointed out that there is no contra-evidence to suggest that the

commission paid to Meenaram was given back to the assessee. In such circumstances, the explanation offered by the assessee was accepted. On

appeal the Tribunal accepted the order passed by the first appellate authority in the matter of allowing commission payment to one Meenarams. In

as much as this conclusion was arrived on the basis of the facts, we hold that no referable question of law arises out of the order of the Tribunal.

Accordingly the tax case petition is rejected.