(1995) 04 DEL CK 0016

In the Delhi High Court

Case No : Income-tax Case No. 3 of 1993

Commissioner of Income Tax APPELLANT

Vs

Raghuvindra Singh RESPONDENT

Date of Decision : 04-04-1995

Acts Referred:

Citation : (1995) 216 ITR 839

Hon'ble Judges : Dr. M.K. Sharma, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : Rajendra, for the Appellant; B.B. Ahuja, for the Respondent

Judgement

Dr. M.K. Sharma, J.—By this petition u/s 256(2) of the Income Tax Act, 1961, the Revenue seeks a direction to the Income Tax

2. Appellate Tribunal to state a case arid refer to this court for its opinion, the following questions, relevant to the assessment year 1983-84:

" (1) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that annual letting value of the house property at N-26, Panchsheel Park, be calculated on the basis of monthly rent of Rs. 7,000 received from the assessed notwithstanding the fact that the assessed entered into a collusive agreement with the lessee-firm which is controlled by him and the lessee is Realizing Rs. 12,000 per month from letting out the above property?

(2) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the Assessing Officer was required to follow the decision taken in the earlier years on this issue notwithstanding the fact that the principle of res judicata does not apply to taxation statutes?

(3) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that loss of Rs. 80,000 arising

from sale of shares is a bona fide transaction and, consequently, the long-term capital loss is allowable? "

3. We have heard learned standing counsel appearing for the Revenue as also learned counsel appearing for the assessee. In our opinion, question No. 1 as proposed by the Revenue is not properly worded although the said question does give rise to a question of law. So far as question No. 2 is concerned, we agree with the Tribunal that the same does not strictly arise out of the order of the Tribunal. So far as question No. 3 as proposed by the Revenue is concerned, in our opinion, the same is based on an appreciation of the evidence and the decision arrived at by the Tribunal is a pure finding of fact. In view of the aforesaid findings, we decline to issue any direction to refer to this court a statement of the case on questions Nos. 2 and 3 as proposed by the Revenue. However, exercising our inherent powers, we reframe question No. 1 as proposed by the Revenue in the following manner, which, in our opinion, is a question of law, and accordingly, requires to be called for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that annual letting value of the house property at N-26, Panchsheel Park, be calculated on the basis of monthly rent of Rs. 7,000 received by the assessed notwithstanding the agreement of the assessed with the lessee-firm which is controlled by him and in pursuance of which the lessee is Realizing Rs. 12,000 per month by letting out the above property? "

4. We, accordingly, direct the Income Tax Appellate Tribunal to state the case and refer the aforesaid reframed question of law to this court for its opinion. This petition is accordingly disposed of with the aforesaid direction. No costs.

