(1993) 11 AHC CK 0043

In the Allahabad High Court

Case No : Income-tax Application No. 145 of 1992

Commissioner of Income Tax APPELLANT

Vs

Ram Richpal RESPONDENT

Date of Decision : 04-11-1993

Acts Referred:
Income Tax Act, 1961 — Section 256

Citation : (1994) 209 ITR 658

Hon'ble Judges : S.C. Verma, J;R.K. Gulati, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is an application u/s 256(2) of the Income Tax Act, 1961, at the instance of the Commissioner of Income Tax, Meerut. The dispute relates to the assessment year 1986-87. Two additions, one for Rs. 44,136 and the other for Rs. 24,500 were made amongst other items to the income returned by the assessee. The additions in question were deleted by the Income Tax Appellate Tribunal when the matter came to be heard by it in due course. By this application, a direction is sought to the Income Tax Appellate Tribunal to refer to this court two questions that have been set out in the application for the opinion of this court on the assertions that the proposed questions are questions of law and do arise out of the order of the Income Tax Appellate Tribunal.

2. We have heard learned counsel for the parties and are of the opinion that the application is liable to be rejected, for the order of the Income Tax Appellate Tribunal is concluded by findings of fact. The addition of Rs. 44,136 was made on the basis of a paper said to have been seized in a search. The assessee denied any connection with the said paper as well as with the investment of Rs. 44,136. The Income Tax Appellate Tribunal has recorded a categorical finding that the Revenue has failed to establish that the papers seized related to the assessee or the amount in question had been invested by the assessee. Likewise, the addition of Rs. 24,500 was made as unexplained investment in girvi item. The

assessee explained that out of the said investment, Rs. 17,000 was invested by him while Rs. 7,500 was invested by his wife. The explanation furnished by the assessee has been found acceptable by the Income Tax Appellate Tribunal.

3. The Tribunal has found as a fact that the assessee''s wife was carrying on pawn broking business and was in a position to make the investment attributed to her. In the net result, on the appreciation of evidence that was placed before the Tribunal, it concluded that the addition of Rs. 24,500 or any part thereof was not liable to be sustained.

4. From the foregoing discussion, it is evident that the order of the Appellate Tribunal proceeds to decide the controversy up for consideration purely on the basis of weighing the evidence that was laid before it and not with reference to the construction of any statutory provisions of law. It is settled that a finding of fact recorded by the Tribunal is not open to challenge in these proceedings unless the findings are such as are not based on any material or otherwise the conclusion reached by the fact-finding authority is perverse or arbitrary in any manner. It is not so in the instant case, nor was there any suggestion forthcoming from standing counsel. The questions proposed in the application also do not suggest so.

5. For what has been stated above, the application is devoid of any merit and is, accordingly, rejected with costs which we assess at Rs. 150.