(1996) 02 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 460 of 1991

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

RANGNATH and CO. — RESPONDENT

Date of Decision : 29-02-1996

Acts Referred:
Income Tax Act, 1961 — Section 256

Citation : (1997) 141 CTR 506

Hon'ble Judges : N. K. Jain, J

Bench : Division Bench

Judgement

N. K. JAIN, J. :

The applicant (the CIT, Bhopal) has filed this application under s. 256(2) of the IT Act, 1961 (for short "the Act"), seeking direction to the Tribunal, Indore, to state the case and refer the following two questions said to be of law arising out of its order, dt. 29th November, 1990, passed in ITA Nos. 491 and 537/Ind. of 1985 relating to the assessment for the asst. yr. 1980-81, for our opinion :

"(1) Whether, on the facts and in the circumstances of the case, the relief allowed by the Tribunal was on justifiable grounds ?

(2) Whether, on the facts and in the circumstances of the case, the decision of the Tribunal was not perverse ?"

2. Briefly stated the facts of the case are that for the asst. yr. 1980-81, the non-applicant assessee filed a return declaring his income at Rs. 1,24,293 only. The ITO however, assessed the total income at Rs. 9,23,700 making additions on various counts. The assessee filed appeal before the CIT(A) who by his order, dt. 30th March, 1985, allowed the appeal in part. Feeling aggrieved thereby both the parties, i.e., the Department and the assessee, went in appeal before the Tribunal. The Tribunal, by its order, dt. 29th November, 1990, dismissed the appeal filed by the Department but allowed assessees appeal in part inasmuch as the Tribunal further disallowed certain additions. The Department preferred an

application under s. 256(1) requiring the Tribunal to state the case and refer the aforesaid questions to the High Court for its opinion. The Tribunal, vide its order, dt. 11th April, 1991, dismissed the application holding that there is no referable question of law.

3. We have heard Shri D. D. Vyas, learned counsel for the applicant/Department and Shri J. W. Mahajan, learned counsel for the non-applicant/assessee.

4. The assessment in question is obviously based on appreciation of facts. In Commissioner of Income Tax (Central), Calcutta Vs. Ashoka Marketing Ltd., the Supreme Court has held that on facts, whether or not the assessee has concealed his income was a question to be decided on the facts of the case and as such no question of law arises from the order of the Tribunal.

Nothing substantial could be made out before us so as to disclose that the findings arrived at by the Tribunal were perverse and not supportable by the evidence on record. We are, therefore, satisfied that the order is based on appreciation of facts and does not give rise to any referable question of law.

5. We, thus, dismiss the application but without any order as to costs. Counsels fee is however fixed at Rs. 750, for each side, if certified.