

(1996) 10 AHC CK 0033

In the Allahabad High Court

Case No : Income-tax Application No. 242 of 1995

Commissioner of Income Tax

APPELLANT

Vs

Shree Ram Jaiswal

RESPONDENT

Date of Decision : 07-10-1996

Acts Referred:

Income Tax Act, 1961 — Section 254, 256, 256(1), 256(2), 69

Citation : (1997) 137 CTR 74 : (1997) 226 ITR 235 : (1997) 93 TAXMAN 249

Hon'ble Judges : R.K. Gulati, J;Om Prakash, J

Bench : Division Bench

Judgement

R.K. Gulati, J.—This is an application filed at the instance of the Commissioner of Income Tax. Allahabad, u/s 256(2) of the Income- tax Act, 1961, with the prayer that the Income Tax Appellate Tribunal, Allahabad, may be directed to refer the following question for the opinion of this court ;

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in entertaining the additional piece of evidence that no investment will be made during the financial year 1986-87, whereas no such evidence had ever been produced before the Assessing Officer during the course of the assessment proceedings and the Tribunal was not justified in accepting it before providing proper opportunity to the Assessing Officer or to the Commissioner of Income Tax (Appeals) in view of the rules as laid -down in Rule 46A of the Income Tax Rules, 1962 ?"

2. Briefly stated the facts are that in the assessment year 1987-88 against the net returned income of Rs. 25,388 the original assessment was completed on a total income of Rs. 53 lakhs which was, however, set aside on appeal by the Commissioner of Income Tax (Appeals)-I, Varanasi, with the direction to make a fresh assessment. In the remand proceedings, the assessment was made on an income of Rs. 38,12,410, which included Rs. 4,61,410 as income from business after giving allowance u/s 80HHC and Rs. 33,51,000 as unexplained investment in the construction of the building known as "Sri Ram Commercial Complex". The

assessment was again challenged by the respondent-assessee in appeal before the Commissioner of Income Tax (Appeals), Varanasi. The income assessed under the head "Business" was reduced to Rs. 3 lakhs by the appellate authority subject to relief u/s 80HHC. In so far as the addition under the head "Unexplained investment" in the construction of the building was concerned, a relief of Rs. 4 lakhs was granted by the appellate authority and thus an addition of Rs. 29,51,000 was sustained under that head. Against the appellate order, two cross-appeals were filed, one by the assessee and the other by the Revenue. In the appeal filed by the assessee it challenged the additions to the returned income which were sustained by the appellate authority, whereas the Revenue challenged the appellate order disputing the correctness of the relief which was allowed to the assessee as stated earlier. The cross-appeals were decided by the Income Tax Appellate Tribunal by its common order. The appellate order in so far as it concerned the business income, was upheld. With regard to the additions under the head "Unexplained investment" the appeal filed by the assessee was allowed and that of the Revenue was dismissed. The Tribunal held that u/s 69 of the Income Tax Act, any addition on account of unexplained investments which are not recorded in the books of account, if any, maintained by the assessee could only be assessed on the basis of the financial year immediately preceding the assessment year in which the investment was made. It held as under :

" Admittedly, the assessment year of the assessee is 1987-88 and the previous financial year for this assessment year will be from April 1, 1986, to March 31, 1987. From the account books of the assessee copy of which is filed at page 21, it is very clear that the last amount spent was on March 27, 1986. It means that no amount was invested by the assessee during the previous financial year which is to be taken into consideration for this assessment year 1987-88. ..."

3. Having held so, the Tribunal observed that it was not necessary to express any opinion on the merits of the valuation of the commercial complex which was also challenged by the assessee on numerous grounds.

4. Feeling aggrieved by the Tribunal's order, the Revenue preferred two separate applications u/s 256(1) of the Income Tax Act, which were registered as R. A. Nos. 181 and 182/(Alld.) of 1993. In R. A. No. 181 of 1993 two questions were proposed for reference to this court, challenging the relief allowed to the assessee under the head "Business income" and the relief of Rs. 4 lakhs which was allowed to the assessee, on account of self-supervision charges by saying that such types of constructions are usually made through contractors. In R. A. No. 182 of 1993 the question proposed was the same as has been raised in the instant application u/s 256(2), which has already been set out above. Both the applications u/s 256(1) were rejected by the Income Tax Appellate Tribunal. Thereafter, the Revenue filed two applications u/s 256(2) before this court, being I. T. As. Nos. 256 of 1995 and 242 of 1995. The first of those two applications was dismissed by a Division Bench of this court on February 16, 1996, and the other application was listed and heard today in which learned counsel for the

parties have been heard.

5. Learned counsel for the Revenue argued that the Income Tax Appellate Tribunal was not justified in entertaining the additional evidence to the effect that no investment in the construction of the building was made during the financial year relevant to the assessment year in question and, in any case, before entertaining such an evidence an opportunity should have been allowed to the assessing authority.

6. We have considered these submissions carefully. From the perusal of the order of the Income Tax Appellate Tribunal passed in appeal, it does not appear that any such objection was raised before it. The Tribunal, in its order, rejecting the application for reference u/s 256(1), has refuted the plea that it has admitted any additional evidence in giving the relief to the assessee. It observed that the account books from which extracts were filed in the paper book before it, were produced before the assessing authority, which were impounded, as would be evident from the "statement of facts" set out in the reference application filed u/s 256(1). It was pointed out that the material relied upon in its decision was already on record in the assessment proceedings. It is pertinent to mention that the correctness of the facts as set out by the Tribunal in its order, rejecting the application u/s 256(1) of the Act has not been disputed either in the application u/s 256(2) of the Act or during the course of the arguments by learned standing counsel, before this court. This being the factual state of affairs and there being no challenge on merits to the view entertained by the Income Tax Appellate Tribunal on the construction of Section 69 of the Income Tax Act, in our considered opinion, the order of the Tribunal does not give rise to any statable question of law. On the contrary, the question does not arise from the order of the Income Tax Appellate Tribunal. In any view of the matter, for the reasons stated earlier, the order of the Income Tax Appellate Tribunal passed in appeal is concluded by findings of fact.

7. The application is, accordingly, rejected.