(1994) 05 DEL CK 0063

In the Delhi High Court

Case No : Income-tax Case No. 100 of 1993

Commissioner of Income Tax APPELLANT

Vs

S.S. Industries RESPONDENT

Date of Decision : 13-05-1994

Acts Referred:

Citation : (1994) 210 ITR 995 : (1994) 76 TAXMAN 161

Hon'ble Judges : D.P Wadhwa, J;D.K. Jain, J

Bench : Division Bench

Advocate : Rajendra and D.N. Malhotra, for the Appellant; C.S. Aggarwal and Salil Aggarwal, for the Respondent

Judgement

D.K. Jain, J.—By this application u/s 256(1) of the Income Tax Act, 1961, the Revenue seeks a direction to the Income Tax Appellate Tribunal to state a case and refer the following question, stated to be a question of law, arising out of Income Tax Appeal No. 298/(Del) of 1989, pertaining to the assessment year 1987-88, to this court for opinion :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in setting aside the order of the Commissioner of Income Tax (Appeals) and directing the Income Tax Officer to allow the claim of the assessed, not considering that :

(i) the amount of Rs. 1,42,908 claimed as commission payable to Shri Chandran had neither been debited in the books of account nor had been paid to him;

(ii) a suit was filed by the assessed in a civil court against Shri Chandran for violation of the written agreement between him and the assessed in which the assessed had not admitted any liability to pay the so-called commission to Shri Chandran hence there was neither a liability at present for in future as per the assessed''s own version, much less a determined liability?"

2. Apart from the fact that the question is badly worked, in our opinion, even

otherwise no question of law arises out of the order of the Tribunal.

3. The assessed-firm engaged in the manufacture of rotary fillers and automatic piston operated filling machines and various kinds of other pharmaceutical machines. During the course of assessment proceedings for the relevant assessment year, the Income Tax Officer noticed that the assessed had made a claim of Rs. 1,76,853 on account to of commission payable to one B. A. R. Chandran at three per cent. on completion of sales of Rs. 56,40,600, for which orders had been obtained by him but the supplies were not made by the assessed during the relevant previous year. He also noticed that in its books of account, for this payment, the assessed had accounted for only Rs. 32,995.50 and the balance claim of Rs. 1,42,908 had been made only in the statement of taxable income, forming part of the return of income for the relevant year. The Income Tax Officer also found that that the commission had not been paid by assessed to Chandran, that the assessed had in fact terminated the commission agency agreement because had started a parallel business and that the assessed had also filed a suit against Chandran making certain claims against him. The Income Tax Officer was of the view that the liability claimed by the assessed in respect of commission payable to Chandran was indeterminate till the proceedings initiated by the assessed and Chandran in the Delhi High Court had concluded. Accordingly, the said claim of Rs. 1,76,853 was disallowed and the amount was added back to the income of the assessed. In the assessed''s first appeal to the Commissioner of Income Tax (Appeals), though the Commissioner upheld that disallowance on the merits, he restricted it to Rs. 26,310 as only this amount was found to have been debited in the books of account of the assessed. The assessed took the matter in further appeal to the Tribunal. While allowing the assessed''s appeal, the Tribunal observed that it was not in dispute that there was an agreement of agency between the assessed and Chandran for long, that the assessed had been paying commission to him, which was being claimed and allowed as a liability by the Revenue, that Chandran had been making his claim for the said commission and this claim had not been denied by the assessed in the suit field in the court but only the payment was being deferred till the disposal of the suit. The Revenue''s application u/s 256(1) of the said Act has been dismissed by the Tribunal on the ground that its finding is based on facts. Hence the present application.

4. Mr. Rajendra, learned counsel for the Revenue, has contended before us that the findings recorded by the Tribunal that : (1) a balance of Rs. 1,76,853 remained due from the assessed to Chandran, (2) in the suit the assessed has not its liability to pay commission under the agreement to Chandran and (3) the liability has otherwise not been disputed by the assessed, are incorrect and, Therefore, the proposed question, being a mixed question of fact and law, a reference should be called for.

5. We do not agree. Having failed to raise a specific question about the aforesaid findings of fact in its application u/s 256(1) of the Act, the Revenue is not

entitled now to urge b0815d940018.htm0815d940018.htm0815d940018.htm0815d940018.htm0815d940018.htm0815d940018.htm0815d940018.htm0815d940018.htm0815d940018.htm0815d940018.htm0815d940018.htm0815d940018.htm0815d940018.htm0815d940018.htmefore us that the said findings are vitiated for any reason. In that view of the matter, no fault can be found with the order of the Tribunal declining reference to this court.

6. As noted above, there is no merit in the application. Dismissed. No costs.