(1989) 02 AHC CK 0055

In the Allahabad High Court

Case No : Income-tax Reference No. 244 of 1988

Commissioner of Income Tax APPELLANT

Vs

Taj Printers RESPONDENT

Date of Decision : 01-02-1989

Acts Referred:
Income Tax Act, 1961 — Section 256(2), 263

Citation : (1989) 178 ITR 384 : (1990) 48 TAXMAN 112

Hon'ble Judges : R.M. Sahai, J;R.K. Gulati, J

Bench : Division Bench

Advocate : Bharatji Agarwal, for the Appellant;

Final Decision : Dismissed

Judgement

R.M. Sahai, J.—This is an application u/s 256(2) of the Income Tax Act, 1961, on behalf of the Commissioner of Income Tax. The following questions of law have been raised :

"(1) Whether, in law and on facts of the case, the Income tax Appellate Tribunal was justified in holding that the jurisdiction u/s 263 of the Income Tax Act, 1961, was invoked by the Commissioner of Income Tax merely on suspicion, conjectures and surmises and under law, he was not empowered to invoke Section 263 in this case, by placing reliance on the decision of the Allahabad High Court in the case of J.P. Srivastava and Sons (Kanpur) Ltd. Vs. Commissioner of Income Tax, , which does not apply to the facts of the present case, because of wide divergence of facts between that case and this case ?

(2) Whether, in law and the circumstances of the case, the Income Tax Appellate Tribunal was justified in cancelling the order passed by the Commissioner of Income Tax u/s 263 of the Income Tax Act, 1961 ?"

2. From the very frame of the question, it is clear that the Tribunal has based its opinion on decisions given by this court. Since the question of law standi already decided by this court, no question of law can be said to arise and, on facts, it has

been found that the basic requirement for assuming jurisdiction u/s 263 was missing as the Commissioner did not either set out the points for inquiry nor did he record any reason or refer to any material as to how the order of the Income Tax Officer was erroneous or prejudicial to the interests of the Revenue.

3. The application for directing the Tribunal, therefore, to submit a statement of case on the proposed questions of law is rejected.

