(2002) 07 MP CK 0100

In the Madhya Pradesh High Court

Case No : IT Reference No. 64 of 1997 17 July 2002 & Income Tax Reference No. 64 of 1997

Commissioner of Income Tax APPELLANT

Vs

Vijay Kumar Rajendra Kumar and Co. RESPONDENT

Date of Decision : 17-07-2002

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

Citation : (2002) 124 TAXMAN 737

Hon'ble Judges : N.K. Jain, J;Deepak Verma, J

Bench : Full Bench

Advocate : R.L. Jain, for the Revenue and B.K. Joshi, for the Assessee, for the Appellant;

Judgement

By this application u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as ''the Act'') as it stood before the Amendment of 1999, the applicant-department seeks direction to the Tribunal to refer the question, as stated in paragraph 8 of the application, for answer by this court.

2. From the averments made in the application, it appears that a licence under the M.P. Excise Act, was granted in an individual name. However, the licensee constituted a registered firm with some more persons and carried on business on the basis of the said licence. Later on, he applied for registration of the firm and continuation thereof. The assessing authority declined the prayer. However, in appeal, the Commissioner (Appeals), reversed the order of the assessing authority. The order of the Commissioner was affirmed in second appeal by the Tribunal. The Tribunal has also rejected applicant''s prayer made u/s 256(1).

3. The matter pertains to the assessment year 1986-87. The Tribunal has declined applicant''s prayer mainly on the basis of the decision of this court in the same matter, pertaining to previous assessment years. It is, however, submitted by Shri R.L. Jain, the learned counsel for the applicant, that the order of this court is the subject-matter before the Supreme Court. He also cited a Supreme

Court decision in Bihari Lal Jaiswal and Others Vs. Commissioner of Income Tax and Others, .

4. Having heard the learned counsel for the parties and considered the decision in Biharilal Jaiswal''s case (supra), we deem it proper to call a reference from the Tribunal for resolution of the said question. Accordingly, we allow the application and direct the Tribunal, Indore Bench, Indore, to refer the following question to be answered by this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in directing to grant registration of the firm for the assessment years 1983-84 and 1984-85 and continuation of registration for the assessment years 1986-87 and 1987-88 ?"

5. Thus, the application stands disposed of, as aforesaid but with no order as to costs. A copy of this order be transmitted to the Tribunal with reference to its order dated 13-5-1997 passed in R.A. Nos. 32-33 (Indore) of 1997.

