
(1995) 03 DEL CK 0031
In the Delhi High Court
Case No : ITC No. 25 of 1994

Director of Income Tax

APPELLANT

Vs

Sita Ram Vijay Kumar

RESPONDENT

Date of Decision : 21-03-1995

Acts Referred:

Citation : (1995) 82 TAXMAN 87

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : K.M.L. Majele, G.C. Sharma and Anjali Sharma, Deokinandan, Adv B. Gupta and R.K. Chaufla, for the Appellant;

Judgement

Dr. M.K. Sharma, J.—By this application under s. 256(2) of the IT Act, 1961, the Revenue seeks a direction to the Tribunal to state a case and refer to this Court for its opinion, the following question of law, relevant to the asst. yr. 1984-85 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in deleting from the assessable income for asst. yr. 1984-85, the unexplained amount of Rs. 7 lakhs ?"

2. The facts relating to the question proposed to be referred by the Revenue are that in the bank accounts of the assessee-firm with Vyasa Bank and Vijaya Bank credits aggregating to Rs. 7 lacs were found. The assessed tried to explain that credits represented cash sales made by the assessee. The aforesaid Explanation of the assessed was rejected by the ITO and an amount of Rs. 7 lacs was added as unexplained investment from undisclosed sources. The assessed challenged this decision in appeal before the CIT(A) which was rejected. Thereafter the matter was brought on appeal before the Tribunal, who after hearing the parties deleted the aforesaid addition. Being aggrieved, the Revenue filed an application under s. 256(1) before the Tribunal for referring the aforesaid question to this Court for its opinion which was rejected, holding that no legal controversy giving rise to the referable question of law arises out of the order of the Tribunal.

3. We have heard the learned counsel for the Revenue as also the assessee. It appears that the learned Tribunal has allowed the appeal and rejected the reference application on the ground that additions have been made under s. 69 and not s. 68 of the IT Act and, Therefore, the additions could not be made in the assessment year under consideration and as such no referable question of law arises.

4. On the other hand, the case of the Revenue is that the provisions of s. 68 of the IT Act are applicable to the facts and circumstances of the case, according to which if a sum is found credited in the books of the assessed maintained for any previous year the cash credit has to be treated as the income of the previous year and the financial year may not be taken as the previous year for such cash credit. In our view, the provisions of ss. 68 and 69 of the IT Act call for consideration in the instant case. Accordingly, we feel that a question of law does arise out of the order of the Tribunal in the instant case.

5. The learned counsel for the assessed submitted before us that the words "unexplained amount of Rs. 7 lacs" do not arise out of the order of the Tribunal, inasmuch as, the Tribunal has never held that the amount of Rs. 7 lacs was unexplained, which was a mere submission of the counsel for the Revenue. On going through the order of the Tribunal passed in appeal, we are satisfied that the said word "unexplained" does not arise out of the order of the Tribunal as the Tribunal has not given any definite finding holding that the said amount was unexplained and accordingly we reframe the question as proposed by the Revenue in the following manner in exercise of powers vested in us :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in deleting the assessable income for the asst. yr. 1984-85, an amount of Rs. 7 lacs ?"

6. Accordingly, this application is allowed and we direct the Tribunal to state a case and refer the aforesaid reframed question to this Court for its opinion. No costs.

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