(1991) 08 AHC CK 0061

In the Allahabad High Court

Case No : Income-tax Case (Reference Application) No. 117 of 1991

Dr. R.D. Gupta APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 05-08-1991

Acts Referred:
Income Tax Act, 1961 — Section 256

Citation : (1992) 198 ITR 533

Hon'ble Judges : R.R. Misra, J;A.P. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.P. Misra, J.—In the present application u/s 256(2) of the Income Tax Act, 1961, the applicant has sought for the following questions of law for reference :

" 1. Whether there was any material with the Tribunal to hold in law that besides the loans admittedly received by the assessee from the L. I. C. of Rs. 10,790 and of Rs. 35,000 from Nagar Mahapalika and income from salary and private practice of the past so many years, the assessee had made, in this very year, unexplained investment of Rs. 41,288 in the construction of the house though as per the diary seized during the search the said amount represented the investment over a period of six years from 1979-80 to 1984-85, during which period the construction of the house had lasted besides the admitted borrowings of Rs. 45,790 ?

2. Whether there was any application of mind by the Tribunal in considering that there was an unexplained investment of Rs. 41,288 by the assessee in this year in the construction of the house ?

3. Whether the estimate of income from private practice at Rs. 32,500 was on any proper material and was not based on mere surmises and conjecture ?

4. Whether there was any material with the Tribunal to legally hold that a sum of

Rs. 10,000 alone could be considered as available towards alleged unexplained investment of Rs. 41,288 in the construction of the house out of the past savings of Rs. 1,21,836 as per the chart at page 3 of the paper book and Rs. 32,500 considered as income from private practice ?"

2. From a perusal of the impugned Tribunal''s order, we find that the Tribunal has recorded the following findings :

" The issues before the Tribunal were regarding the (i) estimate of professional income of the assessee who is a doctor at Rs. 32,500 when the assessee did not maintain any books of account, and (ii) regarding the estimate of household expenses. The Tribunal has passed a detailed order while sustaining the additions made by the Income Tax Officer/ Appellate Assistant Commissioner of Income Tax after appreciating the facts on record. Appraisal of facts on record and coming to a conclusion thereon is only a finding of fact. No question of law, therefore, arises."

3. In view of the aforesaid findings of fact recorded by the Tribunal, we are of the opinion that the Tribunal was right in holding that no question of law arises for reference to this court while rejecting the reference application u/s 256(1) of the said Act.

4. The present application of the assessee-applicant is accordingly rejected.