(1996) 03 MP CK 0036

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 178 of 1991

Ishwarchand APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 21-03-1996

Acts Referred:
Income Tax Act, 1961 — Section 145, 256

Citation : (1997) 224 ITR 739

Hon'ble Judges : N.K. Jain, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : S.C. Bagdiya, for the Appellant; D.D. Vyas, for the Respondent

Judgement

A.R. Tiwari, J.—The assessee has filed this application u/s 256(2) of the Income Tax Act, 1961 (for short "the Act"), seeking a direction to the Tribunal to state the case and refer the proposed questions of law, as noted below, arising out of the order passed in I. T. A. Nos. 1069 to 1074/Ind of 1985 for the assessment years 1974-75 to 1980-81, for our consideration and opinion :

"(1) Whether, in the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that the books of account of professional lawyer could be rejected on the ground that the income is low and cannot be expected of a whole-time legal practitioner, when this was not the ground of rejection of the account books by the Income Tax Officer or the Appellate Assistant Commissioner ?

(2) Whether, in the facts and circumstances of the case, the Appellate Tribunal could in law draw any adverse inference from the non-production of the diary by the assessee When neither the production of the diary was required by any lower authority nor by the Appellate Tribunal except by the casual question during the course of hearing as to whether the assessee has brought his diaries with him ?

(3) Whether, in the facts and circumstances of the case, the estimate of the assessee''s income being arbitrary and without any basis could be sustained in

law by the Tribunal ?"

On the application of the assessee, registered as R. A. No. 55/Ind/ of 1987 one question was referred by the Tribunal. As the other questions were not referred, the assessee has filed this application u/s 256(2) of the Act.

2. Briefly stated, the facts of the case are that the applicant is a legal practitioner. He returned professional income for the respective years at Rs. 540, Rs. 920, Rs. (-) 35 and Rs. 1,170 for the assessment years, respectively, 1977-78, 1978-79, 1979-80 and 1980-81. The authority did not accept this position and estimated the annual income for all these years at Rs. 6,000 per annum. Aggrieved, the assessee filed appeals before the Assistant Commissioner which were rejected (annexure "F"). The assessee then filed the appeals before the Tribunal. The Tribunal upheld the orders and observed that a person engaged as legal practitioner could not be held as earning such a low amount as shown by him. The assessee did not produce the diaries.

3. We have heard Shri S. C. Bagdiya, learned counsel for the applicant/ assessee and Shri D. D. Vyas, learned counsel for the non-applicant/Depart-ment.

4. We have considered the application and as also the submissions. In our view, the order of the Tribunal is based on an appreciation of the facts and features and does not give rise to the proposed questions.

5. The finding reached on appreciation of facts does not give rise to any question of law as held in Commissioner of Income Tax (Central), Calcutta Vs. Ashoka Marketing Ltd., and in Commissioner of Income Tax, Andhra Pradesh Vs. Kotrika Venkataswamy and Sons, .

6. In the result, we are satisfied that no case is made out for issuing a direction to the Tribunal.

7. The application is accordingly dismissed but without any order as to costs.

8. Counsel fee for each side is, however, fixed at Rs. 750, if certified.