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(1989) 01 AHC CK 0063

In the Allahabad High Court

Case No : Income-tax Application No. 45 of 1988

Kailash Chand Gupta — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 16-01-1989

Acts Referred:
Income Tax Act, 1961 — Section 256(2), 40A(3)

Citation : (1989) 76 CTR 51 : (1989) 177 ITR 141 : (1989) 43 TAXMAN 82

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

Bench : Division Bench

Advocate : Rakesh Kumar Agrawal, for the Appellant;

Final Decision : Partly Allowed

Judgement

R.K. Gulati, J.—This is an application u/s 256(2) of the Income Tax Act, 1961, for a direction to the Income Tax Appellate Tribunal, Allahabad Bench, Allahabad, to refer certain questions of law for the opinion of this court, arising out of the order dated July 28, 1987, passed by the Income Tax Appellate Tribunal, Allahabad Bench, Allahabad.

2. In the assessment year 1982-83, a sum of Rs. 68,824 which is in dispute, was added to the income of the assessee on the ground that certain payments for purchase of certain goods were made otherwise than in accordance with the provisions of Section 40A(3) of the Income Tax Act, 1961.

3. The case of the assessee was that the disputed payments which were in sums of Rs. 2,500 or above were made in cash and otherwise than by crossed cheques or drafts under exceptional and unavoidable circumstances, and hence the provisions of Section 40A(3) were not attracted to the facts of the instant case. The assessee relied upon the provisions of Rule 6DD(j) of the Income Tax Rules, 1962, and also upon a circular issued by the Central Board of Direct Taxes (Circular No. 220 dated 31-5-1977--[1977] 108 ITR 8) which provided for mitigating circumstances under which the payment for an expenditure of an

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amount exceeding Rs. 2,500 otherwise than by crossed cheques or drafts may not be disallowed u/s 40A(3) aforesaid.

4. According to the assessee''s case, the disputed payments were made in cash at the instance of the creditors after banking hours. To substantiate his case, the assessee produced the persons to whom those payments were made for cross-examination by the Assessing Officer.

5. Upon hearing learned counsel for the parties, we are satisfied that the order passed by the Income Tax Appellate Tribunal does give rise to a mixed question of law and fact. We, accordingly, direct the Income Tax Appellate Tribunal, Allahabad Bench, Allahabad, to draw up a statement of the case and refer the following question for the opinion of this court:

"Whether the Tribunal was correct in law in holding that there was no unavoidable or exceptional circumstances to warrant payment after banking hours to the representative of the payees who did not have a bank account at Qaimganj which is the place at which the transaction of payment took place ?"

6. The application is allowed in part. The parties shall bear their own costs.

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