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(1994) 07 AHC CK 0047

In the Allahabad High Court

Case No : Income-tax Application No. 382 of 1992

Liladhar Ramsukh Das — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 18-07-1994

Acts Referred:
Income Tax Act, 1961 — Section 256, 37

Citation : (1995) 211 ITR 441

Hon'ble Judges : M.C. Agarwal, J;A.P. Misra, J

Bench : Division Bench

Advocate : V. Gulati, for the Appellant;

Final Decision : Dismissed

Judgement

A.P. Misra, J.—The assessee-applicant seeks reference of the following questions of law u/s 256(2) of the Income Tax Act, 1961 :

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in following its own order for the assessment year 1983-84 regarding commission paid to Messrs. Vishwanath Balkrishna when the facts in this year were materially different as clearly shown from the evidence on record ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in not even considering the additional material placed before it regarding commission paid to Messrs. Vishwanath Balkrishna in the form of comparative sale charts, agreement, credit and debit notes, copies of accounts, etc., which was not available in the preceding year the order of which was erroneously followed by the Tribunal ?

3. Whether, on the facts and in the circumstances of the case, the fact that the Tribunal has not even mentioned the additional evidence and documents placed on record regarding commission in its order, the order of the Tribunal stands vitiated and is therefore, perverse in nature because it has not considered relevant material and based its conclusion on irrelevant material ?

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4. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not following the order for 1983-84 of the Tribunal regarding salary paid to Sheo Kumar Gupta and Atul Kumar Jain when the issues were identical as well as relied upon by the Tribunal was the same in both years ?

5. Whether the Tribunal was justified in not allowing the salary paid to Shri Sheo Kumar Gupta of Rs. 8,400 and to Sri Atul Kumar Jain of Rs. 7,200 when the affidavits of both these persons were filed and the earlier order of the Tribunal for 1983-84 was also filed where the salary has been allowed and the affidavits of both these persons have been taken into consideration ?"

2. We are informed by counsel for the applicant, since an earlier reference application filed by the assessee before the Tribunal pertaining to a typographical mistake was allowed and a direction was issued in favour of the assessee amending the said mistake, hence the relief which the petitioner seeks through questions Nos. 4 and 5 stands decided in favour of the assessee. Therefore, he does not press for calling questions Nos. 4 and 5.

3. Regarding the other questions, it is urged that the Income Tax Tribunal fell into error in rejecting the applicant''s application u/s 256(1) of the Act. The brief facts of the case are that the applicant sold its goods through one Messrs. Vishwanath Balkrishna for which an agreement existed between the parties. The assessing authority did not allow the commission paid. In appeal also, the applicant could not succeed and the appeal was dismissed. The Tribunal also dismissed the second appeal. It is thereafter that the assessee moved an application u/s 256(1) which was also dismissed by the Tribunal.

4. The present case relates to the assessment year 1984-85. The Tribunal relying on an order of the Appellate Tribunal in the case of the assessee for the year 1983-84 rejected the assessee''s claim as was done in that year in question since it was held that the facts in the present assessment year are similar to the one for the assessment year 1983-84. Learned counsel for the assessee has contended that since the payment of commission was accepted by the assessing authority for the assessment year 1982-83 and further initiation of proceedings u/s 147(a) for the same year was later dropped by the Department hence not allowing the said commission for the subsequent assessment years including the year in question is illegal. The finding recorded in a particular year depends on the facts of that assessment year in question and since each assessment year is separate by itself that cannot constitute a ground for holding that commission was paid by the assessee even for the year in question to Messrs. Vishwanath Balkrishna.

5. The further contention is that the assessee has filed certain evidence in the form of credit and debit notes, which are annexure 4 and they pertain to the commission to Messrs. Vishwanath Balkrishna founded on the agreement, which is also subsisting for the year in question and thus the Tribunal should have taken into consideration and should have called the said questions for the opinion

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of this court. The argument is misconceived. We find that the said debit and credit notes do not pertain to the relevant year in question as is involved in the present application. Even reliance on the agreement which is dated November 9, 1980, is only for a period of three years, hence the relevancy of the agreement is only for a part of the assessment year in question. However, even if an agreement was subsisting for a part, it is for the assessee-applicant to show on the basis of evidence to claim commission and as we have held above, the credit and debit notes do not pertain to the year in question. Thus, we do not find any illegality with the order passed by the Tribunal. No question of law arises out of the said Tribunal''s order.

6. Accordingly, this application u/s 256(2) of the income tax Act fails and is hereby dismissed.

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