(2001) 04 DEL CK 0117

In the Delhi High Court

Case No : IT Reference No. 122 of 1984 23 April 2001

LT. COL. KAPIL MOHAN — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 23-04-2001

Acts Referred:

Citation : (2001) 119 TAXMAN 132

Hon'ble Judges : Arijit Pasayat, C.J;D.K. Jain, J

Bench : Full Bench

Advocate : Anoop Sharma and R.K. Raghvan, for the assessed R.C. Pandey and Ms. Prem Lata Bansal, for the Revenue, for the Appellant;

Judgement

Arijit Pasayat, C.J.

At the instance of the assessed, following questions have been referred u/s 256(1) (herein after referred to as the Act) 1961 Income Tax Act for opinion of this court by the Tribunal, Delhi Bench C:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was legally right in adjudicating upon the question that the variation in the income returned by the applicant was not more than Rs. 1 lakh and, accordingly, in holding that the Commissioner (Appeals) was wrong in setting aside the assessment ?

2. If the answer to question No. 1 is in the negative, then, whether, on the facts and in the circumstances of the case, the Tribunal was legally right in not annulling the assessment made by the Income Tax Officer by his order dated 22-12-1978 ?"

2. The dispute relates to the assessment year 1976-77. We need not go into the factual aspects in detail in the light of the accepted position that the Tribunal worked out the variation which was, according to it, less than Rs. 1 lakh. Since the sine qua non for application of section 144B of the Act is a variation of Rs. 1

lakh or more, the answer to the first question is in the affirmative, in favor of the revenue and against the assessed.

3. As the second question itself suggests, the same is to be answered if answer to question No. 1 is in the negative. As our answer to question No. 1 is in the affirmative, we do not think it necessary to answer the second question.

The reference stands disposed of.