(1992) 08 OHC CK 0012

In the Orissa High Court

Case No : M.J.C. No. 24 of 1991

Mathura Prasad Ram APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 06-08-1992

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

Citation : (1994) 116 CTR 355 : (1993) 200 ITR 451

Hon'ble Judges : S.C. Mohapatra, J;A.K. Padhi, J

Bench : Division Bench

Judgement

1. When this matter was called, the petitioner was not available to be heard. Learned standing counsel for the Income Tax Department was, however, heard in the matter.

2. The petitioner has filed an application stating that he had engaged M/s. B. K. Mohanty, P. K. Mishra, S. P. Choudhury, etc., in S. J. C. No. 34 of 1980. Since he suffered from serious bronchitis and other ailments, he was immobile and confined to bed from August 6, 1990, to October 4, 1990. Therefore, he could not have any contact with the advocates engaged by him nor could he prosecute the reference u/s 256(1) of the Income Tax Act, 1961. After recovery, he came to know that the reference was listed for hearing and on account of his absence and the absence of counsel engaged, this court had passed an order dated August 9, 1990, refusing to answer the questions of law arising in that case. Therefore, he prays for restoration of the application u/s 256(2) of the Income Tax Act as the tax liability is more than Rs. 50,000 and he is aged 72 years.

3. Mr. A. K. Roy, learned standing counsel (Income Tax), submitted that there is no scope for restoring a reference application which was decided on merits even though the same was in the absence of the party or his counsel. Mr. Roy is correct in his submission. There is no provision under the Income Tax Act for restoration of an application u/s 256(2) of the Act. The CPC is not applicable to attract inherent powers in exercise of the advisory jurisdiction of the court for

restoration of such application. Therefore, where the court has considered the application on merits and refused to answer the reference, the scope for restoring such applications because it was heard ex parte, is not available. In this view of the matter, there is no merit in this application which is accordingly dismissed.

