
(1985) 08 RAJ CK 0060

In the Rajasthan High Court

Case No : Income Tax Reference No. 307 of 1985

M.L. Gupta

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 08-08-1985

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 256(2)

Citation : (1987) 163 ITR 155

Hon'ble Judges : Panachand Jain, J; Dwarka Prasad Gupta, J

Bench : Division Bench

Advocate : R.L. Goyal, for the Appellant; R.N. Surolia, for the Respondent

Judgement

Dwarka Prasad Gupta, J.—The argument advanced by Shri Ratan Lal Goyal, counsel for the assessee, is that the material on record has not been considered by the Tribunal and, as such, the finding of fact arrived at by the Tribunal is vitiated. His further submission is that Jagdish Prasad who is alleged to have advanced a sum of Rs. 20,000 to the assessee was examined as a witness, but he was not questioned as to his capacity for advancing a loan of Rs. 20,000. We have gone through the statement of Jagdish Prasad recorded by the Income Tax Officer, which is at page 9 of the record, and also the assessment order relating to the assessment year 1973-74 in the case of Jagdish Prasad. We have also gone through the order passed by the Income Tax Appellate Tribunal, Jaipur, dated February 24, 1982, We find from the order of the Income Tax Appellate Tribunal that the material on record has been duly considered. The Tribunal came to the conclusion after considering the statement of Jagdish Prasad and other evidence on record, that Jagdish Prasad was not in a position to accumulate the fund to the extent of advancing the same to the assessee. It cannot be said in the present case that either irrelevant material has been considered or relevant material has been overlooked by the Tribunal. Learned counsel referred to the decision of their Lordships of the Supreme Court in The Commissioner of Income Tax, Kerala, Ernakulam Vs. K.S. Kannan Kunhi, Killara House, Kattoor, in support

of his submission that a question was not put to the witness, Jagdish Prasad, about his capacity to advance the loan of Rs. 20,000. In *The Commissioner of Income Tax, Kerala, Ernakulam Vs. K.S. Kannan Kunhi, Killara House, Kattoor*, their Lordships of the Supreme Court held that the explanation advanced by the witness was not examined at all by the Tribunal. It was also observed that if the explanation was correct, the same was good explanation. In the present case, the explanation given by Jagdish Prasad, who is alleged to have advanced the loan of Rs. 120,000 to the assessee, was considered by the Tribunal and the finding mentioned above was arrived at. We can neither say that the finding of the Tribunal was absurd or that no reasonable man can come to that conclusion on the basis of the evidence on record. In *ADDITIONAL COMMISSIONER OF Income Tax, RAJASTHAN Vs. NOOR MOHD and CO. AND OTHERS.*, it was observed by us that a finding on a question of fact is open to attack as erroneous in law when there is no evidence to support it or if it is perverse. We are unable to hold that the finding arrived at by the Tribunal is perverse or that the material on record has been ignored.

2. In this view of the matter, the finding arrived at by the Tribunal is essentially one of fact and no question of law arises. The Tribunal was justified in refusing to make a reference to this court. The application u/s 256(2) of the Income Tax Act, 1961, is dismissed as no question of law arises out of the order of the Tribunal.