courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 03/09/2026

(1991) 04 AHC CK 0053

In the Allahabad High Court

Case No : Income-tax Application No. 79 of 1991

Niraj Kumar Vijai Kumar APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 22-04-1991

Acts Referred:
Income Tax Act, 1961 — Section 254, 256

Citation : (1992) 196 ITR 811

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.K. Gulati, J.—This is an application under Sub-section (2) of Section 256 of the Income Tax Act, 1961. Four questions have been proposed in the application which are stated to be questions of law in respect of which a mandamus is sought for a direction to the Income Tax Appellate Tribunal to refer the said questions for the opinion of this court.

2. We have heard learned counsel for the parties. The dispute arises from the proceedings u/s 185(1)(b) of the Income Tax Act, 1961. The Inspecting Assistant Commissioner (Assessment) by his order dated March 12, 1987, refused to grant registration to the assessee-firm on the ground that there was no genuine firm in existence as some of its partners were only name-lenders.

3. On appeal, the Commissioner of Income Tax (Appeals) did not agree with the Inspecting Assistant Commissioner (Assessment). He recorded a finding that the partnership in respect of which registration was sought satisfied all the requirements of the Partnership Act. He went on to hold that if the Inspecting Assistant Commissioner had any doubt about the genuineness of some of the partners, he ought to have examined them and there existed no justification for refusing to grant registration in the manner it was done. In the ultimate order, he set aside the order refusing to grant registration with certain directions to the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/niraj-kumar-vijai-kumar-appellant-...

Inspecting Assistant Commissioner (Assessment) to pass a fresh order. Still feeling aggrieved, the assessee filed a second appeal before the Income Tax Appellate Tribunal. The Tribunal dismissed the appeal relying on a decision of the Rajasthan High Court in Prem Agencies Vs. Commissioner of Income Tax, . It took the view that it was not open to the Tribunal to decide the issue on merits, if not so decided by the first appellate authority. The application u/s 256(1) having been rejected, the assessee had filed the present application.

4. At this stage, we are not called upon to pronounce upon the correctness or otherwise of the view taken by the Tribunal. In our opinion, the following question of law does arise from the order of the Income Tax Appellate Tribunal :

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in its view in rejecting the second appeal on consideration which found favour with it without deciding the case on merits ?"

5. The other questions as proposed in the application, in our opinion, do not arise out of the order of the Income Tax Appellate Tribunal. There is no indication in the order of the Tribunal that the controversy which is the subject-matter of the other questions was canvassed before the Tribunal. Accordingly, we decline to issue any direction for making the reference in respect of the other questions.

6. The Income Tax Appellate Tribunal, ''B'' Bench, Allahabad, is directed to draw up a statement of the case and refer the aforesaid question for the opinion of that court.

7. In the result, the application succeeds in part. There shall be no order as to costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/niraj-kumar-vijai-kumar-appellant-…