(1998) 10 KL CK 0051

In the High Court Of Kerala

Case No : Om Prakash, C.J. and J.B. Koshy, J. O.P. No. 387 of 1998 10th November, 1998

P.O. BASHEER APPELLANT

Vs

COMWSSIONER OF INCOME TAX RESPONDENT

Date of Decision : 11-10-1998

Acts Referred:
Income Tax Act, 1961 — Section 256

Citation : (1999) 154 CTR 139

Hon'ble Judges : Om Prakash, C.J;J.B. Koshy, J

Bench : Full Bench

Judgement

OM PRAKASH, C. J.

By this application made under s. 256(2) of the IT Act, 1961, the assessee requires us to direct the Tribunal to draw up a statement of the case and refer the following questions for the opinion of this Court :

"1. Whether the finding of the Tribunal that the claim of the assessee''s wife that she received gifts from her cousins cannot be accepted, is based on proper and correct appreciation of materials on evidence on the record ?

2. Whether the finding of the Tribunal that the bank account does not support the claim of the receipts of the gifts is based on materials on evidence on the record ?

3. Whether, on the facts and circumstances of the case, there was material on record before the Tribunal to come to its conclusion in confirming addition of Rs. 1,70,000 in the hands of the assessee in spite of the fact that Mrs. Ayishabi had admitted that she had invested the funds in the immovable property ?

4. Whether the Tribunal is right in law in holding that based on the materials on record the ITO has established a nexus between the assessee and the sum invested by the assessee''s wife in order to confirm the addition as unexplained income of the assessee ?

5. Whether the Tribunal''s conclusion that the AO had brought on record enough materials to show that Shri C.P. Basheer and Shri CY. Salam are not persons in such affluent circumstances to give so large amounts to their cousin sister is based on any materials in the record especially having regard to the fact that both the said persons were not summoned by the AO while completing the assessment nor any materials were produced by the Department before any of the authorities to disprove the fact ?

2. Counsel for the assessee submits before us that it would suffice if question No. 3 only is referred.

3. Inasmuch as, in our opinion, question No 3 is a question of law, we direct the Tribunal to draw up a statement of the case and refer the said question only for the opinion of this Court.

The application is accordingly allowed.

OPEN

