(1988) 09 MP CK 0043

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 8 of 1986

Precision Electricals and Electronics P. Ltd.	APPELLANT
Vs	
Commissioner of Income Tax	RESPONDENT

Date of Decision : 21-09-1988

Acts Referred:
Income Tax Act, 1961 — Section 256(2), 3

Citation : (1989) 176 ITR 453

Hon'ble Judges : G.G.Sohani, Acting C.J.;K.M. Agrawal, J

Bench : Division Bench

Advocate : S.M. Dagankar, for the Appellant; R.C. Mukati, for the Respondent

Judgement

G.G. Sohani, Actg. C.J.

1. This is an application u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. The material facts giving rise to this application, briefly, are as follows : During the assessment proceedings for the assessment year 1975-76, the accounting year for which ended on December 31, 1974, the assessee contended that its business was set up from the commencement of the year and, therefore, all the expenses incurred between January 1, 1974 , and December 31, 1974, were expenses of a revenue nature and they should be allowed as such in determining the assessee''s income or loss for the assessment year in question. The Inspecting Assistant Commissioner (Assessment), who framed the assessment after determining the "previous year" of the assessee in terms of Section 3(1)(d)(ii) of the Act in compliance with the order of the Commissioner of Income Tax (Appeals) passed in an earlier appeal, held that the assessee''s business was set up with effect from December 14, 1974. The Inspecting Assistant Commissioner (Assessment), therefore, treated the expenditure from December 14, 1974, to December 31, 1974, alone as revenue expenditure. On appeal, the finding given by the Inspecting Assistant Commissioner (Assessment) was affirmed by the

Commissioner of Income Tax (Appeals). The assessee, therefore, preferred a further appeal before the Tribunal. The Tribunal found, after appreciating the entire material on record, that neither actual production had started before December 14, 1974, nor had raw material been purchased, nor orders procured. The Tribunal further found that no business activity had actually taken place before December 14, 1974. In this view of the matter, the Tribunal affirmed the finding of the appellate authority rejecting the contention of the assessee that its business had been set up on January 1, 1974 or some time in July-August 1974. Aggrieved by the order passed by the Tribunal, the applicant submitted an application u/s 256(1) of the Act seeking reference, but that application was rejected. Hence, the applicant has filed this application.

3. Having heard learned counsel for the parties, we have come to the conclusion that the application deserves to be dismissed. The question as to when the business of the assessee had commenced is a question of fact. The Tribunal has, after appreciating the entire material on record, found that the business of the assessee was set up on December 14, 1974. This is a finding of fact. As no question of law is shown to arise out of the order passed by the Tribunal, the application deserves to be rejected.

4. The application accordingly fails and is rejected. In the circumstances of the case, parties shall bear their own costs of this application.

