(1988) 09 MP CK 0002

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(1), 256(2)
Wealth Tax Act, 1957 — Section 3(1)(d)(ii)

Citation : (1988) 41 TAXMAN 108

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

Bench : Division Bench

Advocate : S.M. Dagaonkar and M.S. Kanga, for the Appellant; R.C. Mukati, for the Respondent

Final Decision : Dismissed

Judgement

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

1. This is an application u/s 256(2) of the income tax Act, 1961 (''the Act''). The material facts giving rise to this application, briefly, are as follows: During the assessment proceedings for the assessment year 1975-76, accounting year for which ended on 31-12-1974, the assessee contended that its business was set up from the commencement of the year and, therefore, all the expenses incurred between 1-1-1974 to 31-12-1974 were expenses of revenue nature and they should be allowed as such in determining the assessee''s income or loss for the assessment year in question. The IAC (Appeals) 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 (Appeals) passed in an earlier appeal, held that the assessee''s business was set up with effect from 14-12-1974. The IAC (Appeals) therefore, treated the expenditure from 14-12-1974 to 31-12-1974 alone as revenue expenditure. On appeal, the finding given by the IAC (Appeals) was affirmed by the Commissioner (Appeals). The assessee, therefore, preferred further appeal before the Tribunal. The Tribunal

found after appreciating the entire material on record, that neither actual production had started before 14-12-1974, nor had raw material been purchased, nor orders procured. The Tribunal further found that no business activity had actually taken place before 14-12-1974. 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 1-1-1974 or some time in July-August 1974. Aggrieved by the order passed by the Tribunal, the applicant submitted an application u/s 256(1) seeking reference, but that application was rejected. Hence the applicant has filed this application.

2. Having heard the learned counsels 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 14-12-1974. 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. The application accordingly fails and is rejected. In the circumstances of the case, parties shall bear their own costs of this application.