(1987) 10 RAJ CK 0013

In the Rajasthan High Court

Case No : .I.T. Reference No. 2 of 1981

Prem Agencies APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 12-10-1987

Acts Referred:

Income Tax Act, 1961 — Section 254

Citation : (1988) 67 CTR 11 : (1988) 173 ITR 110 : (1988) 36 TAXMAN 294

Hon'ble Judges : J.S. Verma, C.J;S.M. Jain, J

Bench : Division Bench

Advocate : Rajesh Baliya, for the Appellant; B.R. Arora, for the Respondent

Judgement

1. This reference at the instance of the assessee is u/s 256(1) of the Income Tax Act, 1961, for decision on the following question of law :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in giving a finding on the merits of the case, when the Appellate Assistant Commissioner did not apply his mind and did not give any finding on the merits of the case ?"

2. The relevant assessment year is 1972-73. The Income Tax Officer rejected the application for registration of the firm coming to the conclusion that no genuine firm has come into existence. The assessee appealed to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner took the view that some further enquiry into facts was necessary without which the question of genuineness of the firm could not be decided. Accordingly, the Appellate Assistant Commissioner did not decide the matter on merits and remanded the case to the Income Tax Officer for making a further enquiry as directed. The Revenue, being aggrieved by the order of remand made by the Appellate Assistant Commissioner, preferred an appeal to the Tribunal. The grounds of appeal indicate that the only grievance made in the appeal filed to the Tribunal, was against the remand made by the Appellate Assistant Commissioner to the

Income Tax Officer. The relief claimed in the appeal was only to this extent, or, in other words, to set aside the order of remand. The Tribunal, however, after coming to the conclusion that the remand to the Income Tax Officer was not justified and that the existing material was sufficient to decide the case on merits, proceeded to decide the case itself on merits and held that the refusal of registration was justified. Aggrieved by this decision of the Tribunal instead of remand by the Tribunal to the Appellate Assistant Commissioner for deciding the appeal on merits, this reference has been made at the instance of the assessee.

3. As earlier indicated, the appeal by the Revenue to the Tribunal was merely for quashing the remand order passed by the Appellate Assistant Commissioner on the ground that no further enquiry by the Income Tax Officer was necessary and the case could be decided on merits by the Appellate Assistant Commissioner on the existing material. In such a situation, the scope of the appeal before the Tribunal was merely consideration of the correctness of the order of remand made by the Appellate Assistant Commissioner since even the Revenue, while preferring the appeal, did not agitate the merits of the case for decision by the Tribunal. In such a situation, the Tribunal, after reaching the conclusion that the material present was sufficient for deciding the question of registration of the firm and, therefore, no further enquiry by the Income Tax Officer was called for, it should have, accordingly, quashed the remand order made by the Appellate Assistant Commissioner and required the Appellate Assistant Commissioner to decide the appeal afresh on merits. The Tribunal was, therefore, not justified in proceeding to decide the question of registration on merits itself without the same having been decided first by the Appellate Assistant Commissioner and that point not having been agitated in the appeal filed by the Revenue before the Tribunal.

4. Consequently, the reference is answered in favour of the assessee and against the Revenue by holding that the Tribunal was not justified in giving a finding on the merits of the case instead of remanding the case to the Appellate Assistant Commissioner for decision of the case on merits.

5. No costs.

