(1940) 09 AHC CK 0017

In the Allahabad High Court

RAI SAHEB RAM DAYAL AGARWALA IN RE.

Date of Decision : 16-09-1940

Acts Referred:
Income Tax Act, 1961 — Section 66(3)

Citation : (1942) 10 ITR 93

Final Decision : Dismissed

Judgement

This is an application u/s 66 (3) of the Income Tax in which the applicant requests this Court to direct the Commissioner of Income Tax to state a case.

There is no copy before us of the assessment order of the Income Tax Officer or of the appellate order of the Assistant Commissioner. When we drew the attention of the applicants counsel to this omission he asked for time in which to make it good. The learned Advocate-General there upon pointed out another defect in this proceeding and that is that the sum of Rs. 100 which the applicant had to deposit u/s 66 (2) has already been withdrawn by the applicant. Section 66 (20 requires that the assessee who makes an application under that sub-section to the Commissioner of Income Tax must deposit a fee of Rs. 100, and the second proviso to that sub-section directs that "...... if...... the commissioner refuses to state the case, the assessee may within thirty days from the date on which he receives notice of the order passed by the Commissioner withdraw his application, on he does so, the fee paid shall be refunded." It appears that on the 5th of March 1938 the assessee wrote to the Commissioner of Income Tax and asked for the refund of this sum of Rs. 100 which had been deposited b hi m in connection with his application u/s 33 read with Section 66 (2) of the Act, and a refund was accordingly made. Learned counsel for the applicant says that he himself was not aware of the fact of refund, but he pleads that the application for refund must have been made by his client under a misunderstanding. The second proviso to Section 66 (2) of the Act makes in clear that a refund of the fee will only be made if the application is withdrawn, and the only logical inference which we can draw from the assessees application for refund of money is that he intended to withdraw his application. In the circumstances the application u/s 66 (3) of the Act does not lie and it is accordingly dismissed with costs. Counsel for the Department it entitled to a fee of Rs. 75.

Application dismissed.