

(1977) 10 AHC CK 0011

In the Allahabad High Court

Case No : Income-tax Application No. 557 of 1977

Ram Krishna Gupta

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 11-10-1977

Acts Referred:

Income Tax Act, 1961 — Section 256(2)

Citation : (1977) 2 CTR 277 : (1978) 114 ITR 882

Hon'ble Judges : M.B. Mufti, J; H.N. Seth, J

Bench : Division Bench

Advocate : R.K. Gulati, for the Appellant; Ashok Gupta, for the Respondent

Judgement

H.N. Seth J.

1. By this application u/s 256(2) of the Income Tax Act, 1961, the assessee prays that the Income Tax Appellate Tribunal be asked to state the case to this hon'ble court in respect of the following questions :

"1. Whether, in the facts and circumstances of the case, the Tribunal was right in refusing to adjourn the appeal and proceeding to decide the matter ex parte on merits?

2. Whether the order of the Tribunal is not vitiated being contrary to the evidence on the record with regard to the net profit earned by the applicant in the context in question?

3. Whether there is any material on the record for the margin of profit fixed by the Appellate Assistant Commissioner and confirmed by the Tribunal?

4. Whether the order of the Tribunal is not vitiated on account of its having omitted to consider the material on the record with regard to the specification of the contract handled by the applicant?

5. Whether there was any material on the record in support of the total income

as finally assessed by the Tribunal?

2. If properly analysed, the grievance raised by the assessee in the above five questions essentially is: (i) that the Tribunal was not right in refusing to adjourn the hearing of the appeal and in disposing of it ex parte; and (ii) that there was no material on the basis of which it could have determined the profits by applying the rate at 10 to 12 1/2 per cent.

3. So far as the first question is concerned, it relates to the exercise of discretion by the Tribunal. The assessee made an application for setting aside the ex parte order passed by the Tribunal, which application too was dismissed. This shows that the Tribunal was not at all satisfied that there was any just cause for the assessee not appearing on the date fixed in the appeal. In our opinion, no question of law in respect of the exercise of the discretion of the Tribunal arises. So far as the second submission of the assessee is concerned, we find that the assessee had not produced the appropriate books of accounts and, accordingly, the Income Tax authorities had to make best judgment assessment of the assessee's income. The total receipts by the assessee were accepted and for working out the profits a rate of 10 to 12 1/2 per cent, which is generally applied to the contracts of the nature entered into by the assessee, has been applied by the Tribunal. In these circumstances, it cannot be said that the rate applied by the Tribunal was either arbitrary or that any question of law in that regard arises.

4. There is no merit in this application. It is, accordingly, rejected with costs.