(1991) 09 KL CK 0040

In the High Court Of Kerala

Case No : Original Petition No. 7930 of 1986-S

Teecee Pharma APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 20-09-1991

Acts Referred:

Income Tax Act, 1961 — Section 256

Citation : (1992) 103 CTR 171 : (1992) 198 ITR 434

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : P.G.K. Warrier and K.B. Menon, for the Appellant; P.K.R. Menon and N.R.K. Nair, for the Respondent

Judgement

K.S. Paripoornan, J.—The petitioner herein is a firm. It is assessed to income tax. We are concerned with the assessment year 1976-77 for which the accounting period ended on March 31, 1976. The respondent is the Revenue. The assessee is engaged in the business of manufacture of pharmaceuticals. During the assessment proceedings, the assessee put forward a plea that goods worth Rs. 1,56,174 got damaged and that the same should be excluded from the value of the closing stock. The Income Tax Officer held that the assessee claimed that they were maintaining day to day stock register. In that case, they could have written off the stock when it was found damaged and it was not done so and the same was not mentioned in the stock details furnished to the hank. It was further found that the key of the godown was with the bank and that the bank never intimated the damage to the goods in writing. The plea of the assessee to exclude goods worth Rs. 1,56,174 from the closing stock was declined. In appeal, the Commissioner of Income Tax (Appeals) held that there is nothing to indicate that goods belonging to the assessee and stored in godown were actually damaged or destroyed. In further appeal, the Appellate Tribunal, by affirming the order dated July 26, 1985, held that the assessee was not able to prove that goods worth Rs. 1,56,174 as on March 31, 1976, were damaged. On enquiry, the bank manager could not give the actual amount of damage. The letter dated July 22, 1978, from the bank addressed to the Income Tax Officer did not advance the case of the assessee. The plea that the sales tax authorities had accepted the explanation was found against. The Appellate Tribunal held that the sales tax authorities did not give any finding about the damaged goods. It was only stated in the order that the assessee''s accounts disclosed the closing stock at Rs. 1,62,948. It is thereafter that the assessee filed an application u/s 256(1) of the Act and prayed that the following two questions of law may be referred to this court :

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that, in spite of the fact that the sales tax authorities have admitted the claim, goods to the value of Rs. 1,56,174 should still be treated as part of the closing stock of the assessee for the assessment year 1976-77 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in sustaining the addition of the entire amount of Rs. 1,56,174 to the income of the assessee for the assessment year 1976-77?"

2. The Appellate Tribunal held that the assessee was not able to prove that goods worth Rs. 1,56,174 were damaged as on March 31, 1976, or the date of damage and that the sales tax authorities did not give any finding about the damaged goods. The findings entered by the Appellate Tribunal are pure findings of fact and no question of law arose out of the appellate order of the Appellate Tribunal dated July 26, 1985. It is thereafter that the assessee has filed this petition u/s 256(2) of the Act to direct the Income Tax Appellate Tribunal to refer the two questions of law, formulated hereinabove, for the decision of this court.

3. We heard counsel. Question No. 1 is really hypothetical. The sales tax authorities did not admit the claim. It has been so found by the Appellate Tribunal. That is a question of fact. That specific finding is not challenged. In so far as the Tribunal has held that the assessee has not been able to prove that goods worth Rs. 1,56,174 were damaged as on March 31, 1976, which is essentially a finding of fact, we should say that no referable question of law arises out of the appellate order of the Tribunal. The Appellate Tribunal was justified in declining to refer the above two questions for the decision of this court.

4. The questions of law formulated by the assessee are not referable questions of law. The original petition is without merit. It is dismissed.

