(1990) 07 AHC CK 0021

In the Allahabad High Court

Case No : Income-tax Application No. 106 of 1985

Textile Agents APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 10-07-1990

Acts Referred:
Income Tax Act, 1961 — Section 145, 145(1), 145(2), 256

Citation : (1991) 187 ITR 293

Hon'ble Judges : B.P. Jeevan Reddy, C.J;R.A. Sharma, J

Bench : Division Bench

Judgement

B.P. Jeevan Reddy, C.J.—By this application, the assessee is asking this court to refer the following seven questions u/s 256(2) of the Income Tax Act, 1961 :

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that the provisions of Section 145(1) are applicable ?

2. Whether the Income Tax Appellate Tribunal was justified in its presumption that the loose papers found in the residential premises of a partner, belonged to the applicant-firm and the initial burden is on the applicant-firm to disprove the contents of the said loose papers ?

3. Whether the finding of the Income Tax Appellate Tribunal that the loose papers found in the residence of one of the partners belonged to the applicant-firm is not contrary to law and whether there was any material on record to support such finding ?

4. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that the book version is liable to be rejected on the basis of the one solitary loose sheet alleged to have been recovered from the residential premises of the partners ?

5. Whether there was any material for the finding that a sum of Rs. 5,170 was

received by the applicant-firm or any person on his behalf from Modi Industries and whether the finding recorded by the Income Tax Appellate Tribunal in that regard is liable to be sustained ?

6. Whether the Tribunal has any material to hold that a sum of Rs. 1 lakh was liable to be added in the income of the applicant-firm and whether such addition sustained by the Tribunal can be maintained ?

7. Whether, on the facts and in the circumstances of the case, the addition of Rs. 1 lakh made by the Income Tax Appellate Tribunal is based on any material and whether such addition is not liable to be deleted being based on surmises and conjectures and being arbitrary ?"

2. We are not satisfied that any question ought to be referred. So far as the first question is concerned the order of the Tribunal shows that the books of account maintained by the petitioner were rejected. In such a case, in fact, Sub-section (2) of Section 145, would apply. The mere fact that the authorities referred to the proviso to Section 145(1) does not give rise to a referable question of law. Questions Nos. 2 to 5 relate to the reasoning of the Appellate Tribunal and pertain to the realm of facts.

3. So far as question No. 6 is concerned, it was a question of estimate being made. The assessing authority estimated the income at Rs. 8 lakhs. The appellate authority reduced it to Rs. one lakh which was confirmed by the Tribunal. It is not suggested that there was no material to support the said estimate. It is thus not a question of law.

4. Question No. 7 is really another facet of question No. 6 and cannot be referred.

5. For the reasons given above, the application is rejected. No costs.

