(1972) 11 RAJ CK 0021

In the Rajasthan High Court

Case No : Restoration Application No. 104/70 in Income Tax Civil Reference No. 3/69

Zoraster and Co. Private Ltd. APPELLANT

Vs

The Commissioner Income Tax RESPONDENT

Date of Decision : 10-11-1972

Acts Referred:
Income Tax Act, 1961 — Section 66(5)

Citation : (1973) RLW 153 : (1972) WLN 956

Hon'ble Judges : Jagat Narayan, C.J;S.N. Modi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard the learned Counsel for the petitioner.

2. In M.M. Isphani Ltd. Vs. Commr. of Excess Profits Tax, West Bengal, it was held by a Division Bench of the Calcutta High Court that "in spite of the apparently mandatory language of Section 66(5) its true import cannot be to require the High Court to answer the questions referred to it in all circumstances, irrespective of whether the parties appear before it or not. Before the duty contemplated by the section to decide the questions of law referred can arise, a hearing of the case must take place because the sub-section opens with the words, ''The High Court upon the hearing of any such case etc.'' Where the party who has caused the Reference to be made and who is in the position of a plaintiff, fails to appear, no hearing of the case can take place and since the preliminary condition of the subsection is not satisfied in such a case, the consequent obligation of deciding the question of law and delivering a judgment does not also arise."

3. This view was dissented from by a Division Bench of the Madras High Court in Tamarind Products, Vellore and Another Vs. Commissioner of Income Tax, Madras, in which it was held that "it cannot be laid down as an inflexible rule, even of practice, that where the assessee defaults appearance before the Court,

it has no option but to refuse to answer the question referred to it. The jurisdiction to refuse to answer the question is there. But its exercise in any given case is a question of discretion."

4. However, the learned Counsel was unable to cite any authority in support of the proposition that if the Court dismisses the reference for default it can be restored.

5. On the other hand learned Counsel for the Revenue has relied on a decision of a Division Bench of this Court in M/s Jaipur Mineral Development Syndicate, Jaipur v. The Commissioner Income Tax, Delhi (Central) New Delhi D.B.I.T. Reference No. 14 of 1970; decided on 22-2-71 by the High Court of Rajasthan at Jodhpur in which it was held as follows:

The Court having refused to answer the reference on account of the non-prosecution by the petitioner has now become functus-officio and cannot entertain the application for rehearing the reference and answering the question.

6. In view of the state of law, we hold that we have no power to restore the reference and dismiss the restoration application without any order as to costs.