

**Cit Vs. Sheekumar. Ramprasad Country Liquor Contractor and Co.**

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**Court :** Madhya Pradesh

**Decided On :** Oct-06-2004

**Reported in :** [2005]144TAXMAN638(MP)

**Appeal No. :** Income-tax Reference No. 67 of 1998 6 October 2004.

**Appellant :** Cit

**Respondent :** Sheekumar. Ramprasad Country Liquor Contractor and Co.

**Advocate for Pet/Ap. :** R.L. Jain with Ku. Mandlik, *for the Commissioner.*

**Judgement :**

**A.M. Sapre, J.**

This is an application made by the revenue (Commissioner of Income-tax) under section 256(2) of the Income Tax Act, 1961, consequent upon the dismissal of their application made under section 256(1) of the Act by the Tribunal in R. A. No. 126/Ind of 1997, which in turn arises out of an order passed by the Tribunal dated 17-7-1997, in I. T. A. No. 887/Ind of 1992 pertaining to the assessment year 1987-88. By the impugned order the learned members of the Income Tax Appellate Tribunal were of the view that the questions proposed by the revenue do not involve any question of law which is capable of being referred to the High Court for its opinion. Accordingly, the reference application made by the revenue under section 256(1) of the Act before the Income Tax Appellate Tribunal was dismissed,

holding that the questions proposed are essentially questions of facts. It is this order against which or consequent upon which this application has been presented by the revenue by taking recourse to the provisions of section 256(2) of the Act praying for calling for the questions proposed by the revenue to be answered by this court.

Heard Shri R. L. Jain with Ku. Mandlik, learned counsel for the applicant.

These are the questions which the revenue has proposed for being answered by this court on a reference being called for from the Tribunal under section 256(2) of the Act :

'(i) Whether, on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in deleting the additions of Rs. 70,60,749 and Rs. 66,78,000 holding that the assessee has discharged its primary onus even when the same was not discharged ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming the order of the CIT(A) deleting the addition of Rs. 3,53,58,424 on account of suppressed sales

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the addition of Rs. 4,24,600 on the ground that the same is made on surmises even when the same was made on the basis of documentary evidence for rent from chicken shop and cycle stand ?

(iv) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the addition of Rs. 1,68,000 on the basis that the same has been made without evidence on account of excess cash utilised elsewhere for earning income ?'

Having heard learned counsel for the petitioner and having perused the record of the case, we are of the opinion that no referable question arises in this case and the question really involved in the case, is a question of fact. Accordingly, the Tribunal did not commit any error when it declined to make a reference to this court.

Basically, the question before the taxing authority and which travelled up to the Tribunal was in regard to addition/deletion of some amount as mentioned in the proposed questions. This question was examined by the taxing authorities and after obtaining the explanation from the assessee, decided the same in favour of the assessee by accepting the deletion so made by the assessing officer. The Tribunal while deciding the second appeal, held that the explanation offered by the assessee is genuine, bona fide and consequently, the deletions deserve to be upheld. The explanation thus offered by the assessee in regard to the deletion was accepted being satisfactory.

In our opinion the questions referred supra, proposed by the revenue do not involve any question of law. The explanation offered by the assessee was accepted by the Tribunal. The Tribunal had the jurisdiction to accept the explanation offered by the assessee and it was rightly accepted. This court cannot go into the question, i.e., as to whether the explanation offered by an assessee constitutes sufficient cause or not in proceedings under section 256(1) of the Act. We, therefore, agree with the observations made by the learned members of the Tribunal while dismissing the application made by the revenue, under section 256(1) of the Income Tax Act and hold that this application does not involve any referable question of law so as to call the same from the Tribunal for being answered by this court on merits.

As a consequence, the application fails and is hereby dismissed.

No costs.

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