

Commissioner of Income-tax Vs. Ganesh Trading Co.

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Court : Allahabad

Decided On : Apr-03-1978

Reported in : [1979]117ITR975(All)

Judge : Satish Chandra, C.J. and ;K.N. Goyal, J.

Acts : [Income Tax Act, 1961](#) - Sections 40A, 40A(3) and 256

Appeal No. : Income-tax Reference No. 60 of 1975

Appellant : Commissioner of Income-tax

Respondent : Ganesh Trading Co.

Advocate for Def. : R.S. Dhawan, Adv.

Advocate for Pet/Ap. : Ashok Gupta, Adv.

Judgement :

Satish Chandra, C.J.

1. The Tribunal has referred to us two questions, one at the instance of the Commissioner, while the second question is at the instance of the assessee. The assessee, however, did not make any application under Section 256(1) of the I.T. Act. It made a prayer for reference of the second question at the hearing of the application filed by the Commissioner. In our view, the Tribunal had no jurisdiction to refer a question at the instance of a party which has not applied for it. The second question, hence, is returned unanswered.

2. So far as the first question is concerned it stands decided by a Bench of this court in U.P. Hardware Store v. CIT : [1976]104ITR664(All) . It was held that there was no justification for accepting the plea that the word 'expenditure' used in Section 40A(3) should be restricted to overhead expenses enumerated in Sections 30 to 43A. The word 'expenditure' was of wide import. It would cover the expenses to be taken into account while determining the gross profit. The gross profit is determined by the difference between the opening stock and the purchases on the one hand and the closing stock and the sales on the other. The payments made for purchases would also be covered by the word 'expenditure' and such payments could be disallowed if they are made in cash in sums exceeding Rs. 2,500.

3. In view of this decision, we answer the first question referred to us in the negative, in favour of the department and against the assessee. The Commissioner will be entitled to costs which are assessed at Rs. 200.

