

**(1991) 01 AHC CK 0047**

**Allahabad High Court**

**Case No:** Income-tax Reference Application No"s. 179 and 180 of 1990

Shankerji Construction Co.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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**Date of Decision:** Jan. 31, 1991

**Acts Referred:**

- Income Tax Act, 1961 - Section 185, 256, 256(1), 256(2)

**Citation:** (1991) 192 ITR 563 : (1991) 55 TAXMAN 380

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

**Bench:** Division Bench

**Advocate:** S.P. Gupta, for the Appellant;

**Final Decision:** Allowed

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### **Judgement**

B.P. Jeevan Reddy, C.J.

By this application u/s 256(2) of the Income Tax Act, 1961, the assessee is asking this court to refer the following questions for the opinion of this court :

"(i) Whether the Tribunal is legally justified in upholding the refusal of registration u/s 185 of the Income Tax Act ?

(ii) Whether, even after accepting the existence of a partnership-firm by taking its status as an unregistered firm and without pointing out any non-compliance with any requirement under the Income Tax Act for the claim of the registration under the Income Tax Act, the Tribunal is legally justified in refusing registration u/s 185 of the Income Tax Act ?

(iii) Whether, on the facts and circumstances of the case, while the averments made by the Commissioner of Income Tax (Appeals) were not borne out from the record and inasmuch as they were contradictory to the documentary evidence on record, the Tribunal is legally justified in relying upon the observation of the Commissioner of Income Tax (Appeals) ?

(iv) Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in taking the view that the partnership was not signed by Satya Narain ?

(v) Whether the information said to have been obtained by the Commissioner of Income Tax (Appeals) from Om Prakash, outside the record was admissible in evidence and could be relied upon to record the finding that the deed had not been signed by Satya Narain ?

(vi) Whether the aforesaid information, even if true, could be relied upon and taken as evidence against the other partners who constituted the firm without their knowledge of the same and without any opportunity to them to meet it ?"

2. It has been brought to our notice by learned standing counsel for the Revenue that the questions stated in the application u/s 256(2) of the Act are at variance with the questions which were asked to be referred by the assessee in his application u/s 256(1) of the Act. On verification, we find this objection to be well-founded. It is well settled that it is not open to the assessee to ask for different questions to be referred in his application u/s 256(2) than the questions which he asked to be referred in his application u/s 256(1). Probably, he may reframe the questions but even then he must state the said facts expressly in his application.

3. Sri S. P. Gupta, learned counsel appearing for the assessee, stated before us that the questions which are at variance with the questions asked for reference before the Tribunal may be ignored and only one question which is stated as question No. 1 in this application may be referred. He has mainly placed reliance on a decision of the Punjab and Haryana High Court in [Jagan Nath Pyare Lal Vs. Commissioner of Income Tax](#) .

4. Having heard counsel for both the parties, we are of the opinion that question No. 1 does arise from the order of the Tribunal and, accordingly, the applications are allowed in part. The Tribunal is directed to state question No. 1 aforementioned u/s 256(2) of the Act, No costs.