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(1990) 09 AHC CK 0014

Allahabad High Court

Case No: Income-tax Reference No. 13 of 1978

Munna Lal and Sons		APPELLANT
	Vs	
Commissioner of Income Tax		RESPONDENT

Date of Decision: Sept. 12, 1990

Acts Referred:

- Income Tax Act, 1961 - Section 147, 148, 57, 58

Citation: (1991) 187 ITR 378 : (1991) 54 TAXMAN 62

Hon'ble Judges: B.P. Jeevan Reddy, C.J; S.C. Verma, J

Bench: Division Bench

Advocate: Vikram Gulati, for the Appellant;

Final Decision: Allowed

Judgement

B.P. Jeevan Reddy, C.J.
u/s 256(2) of the Income Tax Act, 1961, the Tribunal has referred the following question for the opinion of this court :

"Whether, oh the facts and circumstances of the case, the Tribunal was legally justified in holding that the assessment was validly reopened u/s 147(b) of the Income Tax Act, 1961 ?"

2. In this case, an assessment was made on July 25, 1969, for the assessment year 1967-68. Subsequent thereto, it appears that the Inspecting Assistant Commissioner brought to the notice of the Income Tax Officer that the computation made by him of the assessee''s income from other sources was not in accordance with the provisions of Sections 57 and 58 of the Income tax Act and that the deductions granted by the Income Tax Officer are contrary to law. Thereupon, the Income Tax Officer issued a notice u/s 147(b) read with Section 148, reopened the assessment and passed another assessment order. The assessee''s appeal against the same was allowed by the Commissioner of Income Tax (Appeals) but, on further appeal by the

Department, the Tribunal set aside the first appellate order. It found that the first appellate authority has not examined certain contentions raised by the assessee and, accordingly, the matter was remanded to him. Thereupon the petitioner applied for and obtained the present reference.

3. It is clear from a reading of the order of the Tribunal that the assessment was reopened on the basis of and in pursuance of the report, or remarks, as it may be called, by the Inspecting Assistant Commissioner who pointed out the errors in the assessment order. It is not a case of the Inspecting Assistant Commissioner bringing the correct position of law to the notice of the Income Tax Officer but it is a case where the Inspecting Assistant Commissioner pointed out the errors in the assessment order. Such a proceeding or remarks of the Inspecting Assistant Commissioner cannot constitute "information" within the meaning of Section 147(b). This is the view taken by a Bench of the Bombay High Court in Commissioner of Income Tax, Bombay City-III Vs. H.D. Dennis and others, , following decision of the Supreme Court in Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, .

4. For the above reasons, the question referred is answered in the negative, i.e., in favour of the assessee and against the Revenue. No costs.