

(1979) 10 AHC CK 0027**Allahabad High Court****Case No:** Income-tax Reference No. 474 of 1977

Addl. Commissioner of Income
Tax

APPELLANT

Vs

Jamuna Dass Nemi Chand

RESPONDENT**Date of Decision:** Oct. 15, 1979**Acts Referred:**

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

Citation: (1980) 15 CTR 75 : (1980) 121 ITR 777**Hon'ble Judges:** R.R. Rastogi, J; C.S.P. Singh, J**Bench:** Division Bench**Advocate:** R.K. Gulati and Ashok Gupta, for the Appellant; B.V. Gupta, for the Respondent**Final Decision:** Disposed Of

Judgement

C.S.P. Singh, J.

The Tribunal has referred two questions of law for our opinion:

"1.Whether the Appellate Tribunal is legally correct in holding that Section 40A(3) of the Income Tax Act, 1961, did not apply to the purchase price in respect of goods purchased for trading or manufacturing and in thus deleting the sum of Rs. 28,150 added by the Income Tax Officer u/s 40A(3) of the Act ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that the payments made by the assessee were not protected by rule 6DD of the Income Tax Rules, 1962 ?"

2. So far as the first question is concerned it is covered by the authority of this court in the case of U.P. Hardware Store Vs. Commissioner of Income Tax, , where it has been held that the word "expenditure" includes expenses for purchase of goods purchased for trading or manufacturing. This being so, the Tribunal erred in (sic) the sum of Rs. 28,150 added by the ITO u/s 40A(3) of the Act.

3. So far as the second question is concerned, it appears that the department had not asked for a reference of this question but the Tribunal referred this question suo motu, according to counsel for the assessee, while according to the counsel for the department, the second question was referred at the instance of the assessee. A reference can be made to this court u/s 256 either at the instance of the assessee or of the department. Before a reference can be made an application stating the question of law, in respect of which, either the assessee or the department seeks a reference, has to be moved before the Tribunal. The Tribunal does not have any suo motu powers of referring any question of law in the absence of any application for a reference. This being so, the questions which the Tribunal can refer are only such questions in respect of which a reference application u/s 256(1) has been made. In the present case as the question relating to Rule 6DD had been decided in favour of the department and as no application for a reference of this question had been moved by the department, it was erroneous on the part of the Tribunal to have referred the second question for the opinion of this court.

4. We accordingly return the second question unanswered. The department is entitled to its costs which is assessed at Rs. 200, Counsel's fee is assessed at the same figure.