

**(1994) 07 AHC CK 0031**

**Allahabad High Court**

**Case No:** Income-tax Application No. 17 of 1993

Commissioner of Income Tax

APPELLANT

Vs

Ram Agarwal (HUF)

RESPONDENT

**Date of Decision:** July 29, 1994

**Acts Referred:**

- Income Tax Act, 1961 - Section 254, 256

**Citation:** (1995) 211 ITR 116

**Hon'ble Judges:** T.P. Garg, J; A.P. Misra, J

**Bench:** Division Bench

**Final Decision:** Dismissed

### **Judgement**

- Heard learned counsel for the applicant, and learned counsel for the respondent.
- The present application u/s 256(2) of the Income Tax Act, 1961, is by the Revenue seeking reference of the following questions of law :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in recalling its order dated July 9, 1990, on the plea that proper opportunity of hearing was not allowed to the assessee ?

2. Whether there was any material on record before the Tribunal to deviate from the findings on facts already recorded, vide its earlier order dated July 9, 1990, so as to enable it to recall and review the said order ?"

3. It is not necessary to give the preceding facts for the purposes of disposing of this application, but the facts as existed before the Income Tax Tribunal. In the present case, after the remand of the case by the Tribunal, fresh assessment was made on March 30, 1988, determining the total income of the assessee at Rs. 4,60,560 including unexplained investment of Rs. 4,15,000. The first appellate authority dismissed the said appeal against which a second appeal was preferred before the Income Tax Tribunal by the assessee. The appeal of the assessee was dismissed by

the Tribunal on July 9, 1990.

4. It is true that in paragraphs 1 to 6 of the said order, it is recorded that the assessee did not co-operate. The Tribunal discussed in its order dated July 9, 1990, each and every issue linking the case and gave its findings on the merits. Thereafter, the assessee filed a miscellaneous application against the said order which has been allowed as per the Tribunal's order dated November 27, 1990. The only question involved in the present case is whether any opportunity was given to the petitioner on the facts and circumstances of the case before the Tribunal or not. Further, after the Tribunal vacated the stay order and adjourning the hearing for June 25, 1990, the notice of hearing fixing the date of June 25, 1990, was served on the assessee on June 21, 1990, i.e., only four days before the date of hearing. The assessee on June 25, 1990, prayed for adjournment because the karta of the appellant was suffering from fever and further the senior counsel who had been engaged by the appellant was not available. A telegram reiterating the aforesaid request was also sent to the Tribunal. The local counsel of the assessee, Sri Anand Godbole, was out of station on June 25, 1990, and he had assured the assessee that the matter fixed on June 25, 1990, would be adjourned and he need not worry about the case specially after the stay order granted by the Tribunal had been vacated. The affidavit of Sri Anand Godbole was also filed. On these facts, the Tribunal recorded the finding that there was a general practice for the Benches of the Income Tax Tribunal to be indulgent in granting requests for adjournments to the parties during the summer vacation and, therefore, the assessee and his counsel were under the impression that the adjournment application would be allowed. Further the judgment of the various High Courts are to the effect that the Tribunal should be slow to dispose of appeals *ex parte* on account of non-availability of counsel especially when counsel from an outside station had been engaged. Hence, on these findings the Tribunal allowed miscellaneous application of the assessee.

5. The findings recorded by the Tribunal are pure findings of fact and we do not find any question of law. The present application is devoid of merit and is accordingly dismissed.