

(1988) 12 MP CK 0003

Madhya Pradesh High Court**Case No:** Miscellaneous Civil Case No. 444 of 1984

Commissioner of Income Tax

APPELLANT

Vs

Babulal Jain

RESPONDENT

Date of Decision: Dec. 8, 1988**Acts Referred:**

- Income Tax Rules, 1962 - Rule 46A(1)

Citation: (1989) 176 ITR 411 : (1990) 51 TAXMAN 13 : (1990) 50 TAXMAN 233**Hon'ble Judges:** G.G.Sohani, Acting C.J.; K.M. Agrawal, J**Bench:** Division Bench**Advocate:** B.K. Rawat, for the Appellant; B.L. Nema, for the Respondent

Judgement

G.G. Sohani, Actg. C.J.

1. By this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Nagpur Bench, has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in dismissing the departmental appeal holding that the case is fully covered by the provisions of the Income Tax Rules, 1962, Rule 46A(1)(d) ?"

2. The material facts giving rise to this reference, briefly, are as follows : While framing the assessment of the assessee for the assessment years 1977-78 and 1978-79, the Income Tax Officer made certain additions to the income returned by the assessee. On appeal, the Appellate Assistant Commissioner allowed the assessee to adduce evidence relating to the additions made by the Income Tax Officer. After appreciating the entire material on record, the Appellate Assistant Commissioner deleted the additions in question made by the Income Tax Officer. Aggrieved by the order passed by the Appellate Assistant Commissioner, the Revenue preferred an appeal before the Tribunal. The Tribunal held that the action

of the Appellate Assistant Commissioner in allowing the assessee to adduce further evidence was justified under the provisions of Rule 46A(1)(d) of the Income Tax Rules, 1962. In this view of the matter, the Tribunal dismissed the appeal. Aggrieved by the order passed by the Tribunal, the Revenue sought a reference and it is at the instance of the Revenue that the aforesaid question of law has been referred to this court for its opinion.

3. From the order passed by the Tribunal, it is clear that the only question which was raised before the Tribunal was that the Appellate Assistant Commissioner was not justified in allowing the assessee to adduce further evidence. The Tribunal held that in view of the provisions of Clause (d) of Rule 46A(1) of the Income Tax Rules, 1962, the Appellate Assistant Commissioner was justified in allowing the assessee to adduce evidence because, before making the additions in question, the Income Tax Officer had not given any opportunity to the assessee to adduce evidence relevant to the grounds of appeal urged by the assessee. In this view of the matter, the Tribunal held that the Appellate Assistant Commissioner was justified under the provisions of Clause (d) of Rule 46A(1) of the Income Tax Rules, 1962, in allowing the assessee to adduce evidence. In view of the finding of the Tribunal that no opportunity was given by the Income Tax Officer to the assessee to lead evidence before making the additions in question, the Tribunal, in our opinion, was justified in dismissing the appeal preferred by the Revenue on the ground that the case was covered by the provisions of Rule 46A(1)(d) of the Income Tax Rules, 1962.

4. For all these reasons, our answer to the question referred to this court is in the affirmative and against the Revenue. In the circumstances of the case, parties shall bear their own costs of this reference.