

(1998) 01 CAL CK 0017

Calcutta High Court

Case No: Income Tax P. No. 67 of 1997 and R.A. No. 425 (Cal.) of 1997

Commissioner of Income Tax

APPELLANT

Vs

Kashiprosad Anoop Kumar

RESPONDENT

Date of Decision: Jan. 8, 1998

Acts Referred:

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

Citation: (1998) 1 ILR (Cal) 203

Hon'ble Judges: Y.R. Meena, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Y.R. Meena, J.

By this application the Department has prayed that a direction be given to Tribunal to send the statement of case, referring the following question for the opinion of this Court:

Whether on the facts and in the circumstances of the case, the learned income tax Appellate Tribunal is justified in holding that the dealings by the Assessing Officer of the loss on, sale of shares claimed by the Assessee and its confirmation by the D.C. (A) was wrong and whether the learned I.T.A.T. was justified in directing the Assessing Officer to allow the share loss claimed by the Assessee.

2. The income tax Tribunal has rejected the application of the Income Tax Officer u/s 256(1) of the Act, 1961 on the ground that finding that the share transactions were genuine, and no question of law does arise.

3. We have also gone through the orders of the Income Tax Officer, Commissioner of Income Tax (Appeal) and the income tax Tribunal. The complete details regarding the transactions of the shares were submitted to the Income Tax Officer at the time of the assessment. The share loss was disallowed only on the basis that the Broker

had not maintained the books of accounts which reflected the transactions with the Assessee. When full details of the transactions were submitted before the Income Tax Officer. On this ground also no disallowance can be made. The question is based on finding of fact. No case is made out that finding is perverse. Accordingly, we answer the question is affirmative, i.e., in favour of the Assessee and against the Revenue.

4. In the result, application u/s 256(2) is rejected.

Bhaskar Bhattacharya, J.

5. I agree.