

(1991) 04 BOM CK 0095

Bombay High Court**Case No:** Income-tax Reference No. 303 of 1977

Commissioner of Income Tax

APPELLANT

Vs

Smt. Sati K. Sippy and others

RESPONDENT

Date of Decision: April 24, 1991**Acts Referred:**

- Income Tax Act, 1961 - Section 143(3), 251, 52

Citation: (1992) 195 ITR 276**Hon'ble Judges:** T.D. Sugla, J; B.N. Srikrishna, J**Bench:** Division Bench**Advocate:** Dr. V. Balasubramanian, for the Appellant; Dinesh Vyas, for the Respondent

Judgement

T.D. Sugla J.

1. In this Departmental reference relating to the assessee's assessment for the assessment year 1970-71, the Income Tax Appellate Tribunal has referred to this court the following two questions of law for opinion u/s 256(1) of the Income Tax Act, 1961 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling (sic), the order of the Appellate Assistant Commissioner setting aside the order of assessment with a direction to the Income Tax Officer to make a fresh assessment after affording the assessee a reasonable opportunity ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the addition of Rs. 3,00,000 u/s 52 of the Income Tax Act, 1961 ?

2. In so far as the second question of law is concerned, counsel are agreed that, in view of the Supreme Court decision in the case of [K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another](#), , the question is to be answered in the affirmative and in favour of the assessee. The question is so answered.

3. As regards the first question, it may be stated that the assessment was made originally by the Income Tax Officer u/s 143(3) on March 26, 1973. It was the contention of the assessee before the Appellate Assistant Commissioner that it was denied reasonable opportunity with regard to the alleged undeclared consideration and compensation received for the reasons given in the order. The Appellate Assistant Commissioner set aside the assessment and directed the Income Tax Officer to give the assessee a fresh opportunity to explain its position as demanded in the assessee's letter dated March 27, 1973, and reiterated by the assessee's advocate before him. It was contended before the Tribunal on behalf of the Revenue that the Appellate Assistant Commissioner should have himself decided the appeal on merits rather than setting aside the order and directing the Income Tax Officer to make a fresh assessment after allowing the assessee an opportunity. For elaborate reasons given in the impugned order, the Tribunal agreed with the Appellate Assistant Commissioner and held that there was nothing wrong in the Appellate Assistant Commissioner's setting aside the order with a direction to do fresh assessment after giving the assessee a reasonable opportunity. We fail to understand what grievance can the Department have against such an order passed by the Appellate Assistant Commissioner and the Tribunal. We also fail to understand as to what question of law is involved in such a conclusion which requires our opinion. In any event, on the facts stated above, we answer the first question also in the affirmative and in favour of the assessee.

4. No order as to costs.