

**(1990) 08 BOM CK 0107**

**Bombay High Court**

**Case No:** Income-tax Application No. 406 of 1988

Commissioner of Income Tax

APPELLANT

Vs

Sunita A. Rawat

RESPONDENT

**Date of Decision:** Aug. 21, 1990

**Acts Referred:**

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

**Citation:** (1992) 194 ITR 509

**Hon'ble Judges:** T.D. Sugla, J; Sujata V. Manohar, J

**Bench:** Division Bench

**Advocate:** G.S. Jetley, J, for the Appellant; S.J. Mehta, J., for the Respondent

### **Judgement**

T.D. Sugla, J.

By an application u/s 256(2) of the Income Tax Act, 1961, the Department has requested the court to direct the Tribunal to refer three questions of law which the Tribunal had declined to refer u/s 256(1) of the Income Tax Act. The questions read as under :

"(1) Whether, on the facts and in the circumstances of the case and in law, the Tribunal having found that the assessee had no materials to support the claim that the discount/commission allegedly paid to the subagents and customers was real, incurred in the character of a trader and further wholly and exclusively incurred for the purposes of the business, was correct in law in not upholding the disallowance made by the Income Tax Officer ?

(2) Without prejudice to the above, whether the Tribunal, on the facts and circumstances of the case, did not act perversely in not upholding the disallowance by the Income Tax Officer of the assessee's claim of alleged commission/discount payments relating to the transactions with Messrs. Indian Hotels Ltd., Garware Shipping Corporation Ltd., Messrs. T. M. Bihari, Messrs. Kalpataru Consultants (P.) Ltd, Messrs. Chowgule and Co., and Chowgule Steamship Co., Shri Arif Ally, Prop.

Ally International and U. B. Rao, ignoring the specific adverse material brought on record through enquiries, and whether the Tribunal's inclusion was one that no reasonable person could have come to ?

(3) Without prejudice to question No. 2, whether the Tribunal was, on the facts and circumstances of the case, correct in law, in granting relief towards the alleged payments referred to in question No. 2 found as "secret commission", ignoring the decision of the Bombay High court in [Goodlas Nerolac Prints Ltd. Vs. Commissioner of Income Tax, Bombay City-II, ?](#)

2. After hearing counsel on both the sides at some length, we are of the view that a question of law does arise out of the order of the Tribunal. The appropriate question, in our opinion, will be as under :

"Whether, on the facts and in the circumstances, the Tribunal was right in allowing deduction at the rate of 65 per cent of commission earned by the assessee for the assessment year 1980-81 ?"

3. The Tribunal is, accordingly, directed to draw up a statement of case and refer the question of law to this court within six months from today.

4. Rule is made absolute as above. No order as to costs.