

Upper India Publishing House P. Ltd.

Vs

Commissioner of Income-Tax, Lucknow

Civil Appeals Nos. 2396 and 2397 of 1978

(P. N. Bhagwati, V. D. Tulzapurkar, R. S. Pathak JJ)

04.12.1978

ORDER

1. There are two question in respect of which a reference has been directed by the High Court on the application of the revenue under s. 256(2) of the I.T. Act, 1961. So far as the first question is concerned, it is undoubtedly a question of law and could properly form the subject-matter of a reference but the second question as framed is clearly a question of fact and we fail to see how it could be directed to be referred by the High Court. The question whether a particular expenditure on rent is excessive and unreasonable or not is essentially a question of fact and does not involve any issue of law and hence we are of the view that the second question ought not to have been directed to be referred by the High Court. But if the second question could not form the subject-matter of a reference, then obviously the firs question becomes academic, because s. 40A(2) (a) cannot have any application, unless it is first held that the expenditure on rent was excessive or unreasonable. We, accordingly, allow the appeal and set aside the order of reference made by the High Court. There will be no order as to costs of the appeal.

Appeal allowed.

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