

SUPREME COURT OF INDIA

Commissioner of Income-Tax

Vs.

J.K. Beri

(S.P. Bharucha and V.N. Khare JJ.)

12.09.2000

ORDER

1. The High Court declined to call for a reference of the following question :

"Whether, on the facts and circumstances of the case, the Income-tax Appellate Tribunal is right in law in quashing the assessment proceedings for the assessment year 1985-86 reopened under Section 147(a) of the Income-tax Act, 1961 ?"

2. It did so because, on its reading, "the findings recorded by the Income-tax Appellate Tribunal are findings of fact based on an appreciation of evidence. We fully agree with the conclusions arrived at."

3. The High Court was entirely in error in coming to the conclusion that the findings of the Tribunal were findings of fact. This is evident from a perusal of the order of the Tribunal and, more particularly the following sentences : "Thus, it is seen that none of the reasons mentioned by the Assessing Officer was recorded by him for reopening the assessment . . ." and "Since we have quashed that reassessment on the legal ground alone, we do not consider it proper to adjudicate the issues raised . . .". Clearly, a question of law arises and the Tribunal is directed to refer to the High Court that question for its consideration, after drawing up a statement of case.

4. The civil appeal is allowed accordingly.

5. No order as to costs.