

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.6959/2001

(From the judgement and order dated 18/10/2000 in ITR 2/99  
of The HIGH COURT OF M.P AT INDORE)

M/S. FARMAKAL

Petitioner (s)

VERSUS

COMMNR. OF INCOME TAX, INDORE

Respondent (s)

(With prayer for interim relief and office report)  
( For Final Disposal )

Date : 09/11/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.C. LAHOTI  
HON'BLE MR. JUSTICE BRIJESH KUMAR

For Petitioner (s) Mr. B. Sen, Sr.Adv.  
Mr. A.P. Dhamija,Adv.  
Mr. Pradeep Aggarwal,Adv.  
Mr. Sushil Kumar Jain,Adv.

For Respondent (s) Mr. Amit Mahajan,Adv.  
Mr. D.N. Ray,Adv.  
Mr. B.V. Balaram Das,Adv.

UPON hearing counsel the Court made the following  
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....J  
.SP2

Leave granted.  
The appeal is allowed in terms of the signed order.

.SP1

(Neena Verma)  
Court Master

(Radha Rani Bhatia)  
Court Master

Signed order is placed on the file.

.PA

.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp  
L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....R  
.PL54

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7865 OF 2001@@  
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC  
(@ Special Leave Petition (C) No.6959/2001)

M/s. Farmakal ..... Appellant

Versus

Commissioner of Income-tax, Indore ..... Respondent

O R D E R@@  
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.....L.....I.....T.....T.....T.....T.....T.....T.....J  
.SP2

Leave granted.

The appellant filed an application under Section 256 (2) of the Income-tax Act, 1961 before the High Court seeking a direction to the Income-tax Appellate Tribunal to draw a statement of the facts of the case and refer the questions set out therein for the opinion of the High Court. The application has been rejected by the High Court forming an opinion that the questions were of fact and not of law.

There were 7 questions set out in the application filed by the appellant whereon a reference was sought for. During the course of hearing before this Court, the learned counsel for the appellant has given up some of the questions and recast the principal questions so as to narrow down their scope. The questions of law now suggested are as under :-

...2/-

: 2 :

.....L.....I.....T.....T.....J  
.SP1

"1. Whether in the facts and circumstances of the case there is any basis in law for addition of the two sums of Rs.50,000/- as income of the assessee in the relevant year?

2. Whether the mere omission on the part of the assessee to include the sum of Rs.50,000/- withdrawn from the bank in his cash book can lead to the inference in law that the amount represented his income?

3. Whether the mere finding that the cash book was unreliable can justify in law the addition of the two sums as income without any independent evidence?"

.....L.....I.....T.....T.....T.....T.....T.....J  
.SP2

We have heard the learned counsel for the parties. We are satisfied that the questions now suggested fall within the scope of the questions which were set out in the application filed by the appellant before the High Court and the appellant is not suggesting any new question. The questions so framed are questions of law and do arise out of the facts of the case found by the Tribunal.

The appeal is allowed. The judgment of the High Court is set aside. The Tribunal is directed to draw a statement of the facts of the case and refer the above said  
...3/-

: 3 :

three questions for the opinion of the High Court in accordance with law.

.SP1

.....J.  
( R.C. LAHOTI )

New Delhi,  
November 09, 2001.

.....J.  
( BRIJESH KUMAR )