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C.A.No. 4909 OF 1999

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ITEM No.102

COURT No. 2

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.4909 of 1999.@@
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Commnr. of Income Tax, Madras

Appellant

VERSUS

M/s. Sri Ramdas Motor Transport Ltd.

Respondents

(With Office Report)

Date : 23/08/2001 This appeal was called on for hearing today

CORAM :

HON'BLE MR. JUSTICE S.P. BHARUCHA
HON'BLE MR. JUSTICE Y.K. SABHARWAL
HON'BLE MR. JUSTICE ASHOK BHAN

For Appellant (s) Mr. M.L. Verma, Sr. Adv.
Mr. Preetesh Kapur, Adv.
Mr. B.V. Balaram Das, Adv.
for Ms. Sushma Suri, Adv.

For Respondent(s) Mr. K. Parasaran, Sr. Adv.
Mr. V. Balachandran, Adv.

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

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The civil appeal is allowed.

No order as to costs.

(T.I. Rajput)
Court Master

(Shelly Sengupta)
Court Master

(Signed order is placed on the file)

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CIVIL APPELLATE JURISDICTION

Civil Appeal No. 4909 of 1999@@
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Commissioner of Income Tax, Madras ...Appellant (s)

Versus~

M/s. Sri Ramdas Motor Transport Ltd.Respondent (s)

O R D E R@@
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The Revenue moved the High Court under Section 256(2) of the Income Tax Act, 1961 seeking a reference of eleven questions. The High Court disposed of the application by a lengthy judgment that concluded by saying that no question of law was found. Among the eleven questions, were Question Nos.3 and 4, which read thus:

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"3. Whether the interpretation of Appellate Tribunal as regards the scope and ambit under section 132(4) is correct?

4. Whether the Appellate Tribunal is justified in holding that explanation to section 132(4) is prospective in nature; though the said explanation laid down only rule of evidence and in that sense it is only procedural in nature?"

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In this appeal by the Revenue, leave has been granted restricted to Question Nos.3 and 4.

...2/-

As will be seen, these questions deal with the scope and ambit of Section 132(4) of the Act and the Explanantion thereto and whether or not it is prospective in nature. In its long judgment declining to call for a reference, the High Court has, in effect, interpreted Section 132(4) and its Explanation, which it could not have done without calling for a reference of the concerned questions and hearing it. On this short ground alone, the judgment and order under challenge needs to be set aside.

Mr. K. Parasaran, learned counsel for the assessee, submitted that instead of sending the matter back to the High Court for considering these questions on reference, we should deal with them ourselves because there was a difference of opinion among certain High Courts with regard of the

provisions of Section 132(4) and the Explanation thereto. We are disinclined to do so. The High Court itself must consider the questions and, in doing so, the judgments of the High Courts that deal with Section 132(4) and its Explanation.

Should the High Court come to the conclusion that the Explanation to Section 132(4) is retrospective in nature, it shall consider whether the Tribunal was right in the order that it passed, having regard to the evidence on record.

The civil appeal is allowed. The judgment and order ...3/-

- 3 -

under challenge is set aside. The application of the Revenue for a reference under Section 256(2) is allowed insofar as it relates to Question Nos.3 and 4 afore-mentioned. The Tribunal shall refer those questions to the High Court for consideration, after drawing up a Statement of Case.

No order as to costs.

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.....J.
(S.P. Bharucha)@@
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.....J.
(Y.K. Sabharwal)@@
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.....J.
(Ashok Bhan)@@
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New Delhi,
August 23, 2001.