FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

INCOME TAX REFERENCE (itr) No. 29 (B) OF 1994

The Commissioner of Income Tax

v.

M/s Central Province Manganese Ore Co. Ltd. Ngp.

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders.	Courts's or Judge's orders

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Coram : B.P .Dharmadhikari and V.M.Deshpande, JJ.

Date : 10th DECEMBER, 2015

Advocate Bhattad is present for the Income Tax Department. Advocate Dewani is present for the assessee.

Both the learned counsel, however, express some difficulty in assisting the Court. Advocate Bhattad submits that all the relevant case papers are not supplied to him. Advocate Dewani submits that respondent-assessee may not be in existence and he is appearing only because his name figures on the daily board. He is seeking time to obtain instructions.

We find that under Section 256(1) of Income Tax Act, 1961, following question has been referred to this Court :

"Whether on the facts and in the circumstances of the case, the ITAT was justified in directing that expenses claimed to be business expenditure be considered for allowances though the assessee company has been held to be not carrying on business by the ITAT itself'?"

The relevant assessment year is 1984-85. The question as formulated itself shows a conclusive and binding finding that assessee company is not carrying on business. This finding has been reached by ITAT itself earlier and no question enabling us to re-examine or examine this aspect of the matter has been referred.

Today we have decided Income Tax Reference No. 96 of 1994 between the same parties. There, assessment year in question was same. In that matter we have considered the judgment dated 20.4.2007 delivered by this Court in Income Tax Appln. No. 56 of 1995 for the very same assessment year. In paragraph 6, this Court has observed that in the assessment year in question there was no business income earned by the assessee and this finding has been recorded as undisputed fact. Therefore, Court has found that income would have been from other sources and the deduction of difference in principal amount and actually suit claim by the assessee as income from other sources has been upheld.

We, in this situation, find that the question as framed cannot and need not be answered. Accordingly, reference proceedings are disposed of.

JUDGE **JUDGE**

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