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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.212 OF 1999

M/s. Tulsidas V. Patel Pvt. Ltd. ..Applicant
Versus
The Commissioner of Income Tax
Bombay City-II Bombay. ..Respondent
And
The Commissioner of Income Tax,
Bombay City-II, Bombay. ..Applicant
Versus
M/s. Tulsidas V. Patel Pvt. Ltd. ..Respondent

....

Mr. Varun Ohri i/b. D. M. Harish & Co. for the Applicant-assessee.
None for the Respondent-Revenue.

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CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 16th JANUARY, 2017

P.C.

1. This Reference under Section 256(1) of the Income Tax Act, 1961 (the Act) by the Income Tax Appellate Tribunal (Tribunal) relates to Assessment Year 1981-82.

2. The Reference arises from applications made both by the assessee as well as by the Revenue to the Tribunal. None appears in support of the questions at the instance of the Revenue. It appears that the Revenue is

not interested in prosecuting its case. Therefore the question raised at the instance of the Revenue is returned unanswered.

3. So far as the assessee is concerned, Mr. Varun Ohri, the learned counsel appearing for the assessee very fairly states that he is not in a possession of any evidence to show that the Reference has been served upon the Revenue.

4. In terms of Rule 658 of the Bombay High Court (Original Side) Rules, the party at whose instance Reference has been made to this Court is required to take all steps as are necessary to have a notice issued and served upon the opposite party within two months of the receipt of notice of Reference in the High Court.

5. Mr. Ohri, the learned counsel states that in the present facts there was no necessity to serve the Revenue. This for the reason that the Revenue had also filed an application for Reference to the Tribunal and the Reference as framed herein arises from applications made before the Tribunal both by the Revenue as well as the assessee.

6. We find that Rule 658 of the Bombay High Court (Original Side)

Rules does not make any distinction on the basis of the Reference of the Tribunal emanating from application made by the Revenue and the assessee before the Tribunal. It casts an obligation on the person wishing to pursue its questions to serve the same on the other side. As the assessee has not yet complied with the requirements of completing a service pertaining to a Reference of 1999 is in itself an indication of the assessee not being serious about pursuing this Reference.

7. In the above view, the questions raised at the instance of the assessee is returned unanswered.

8. Reference returned unanswered.

9. The Reference is disposed of on above terms. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**