

Commissioner Of Income-Tax, Bombay vs Gannon Dunkerley And Co. Ltd. on 14 July, 1987

Equivalent citations: AIR1987SC1873, [1987]167ITR637(SC), JT1987(3)SC64, 1987(2)SCALE21, 1987SUPP(1)SCC188, 1987(2)UJ324(SC), AIR 1987 SUPREME COURT 1873, 1987 TAX. L. R. 1242, 1987 UJ(SC) 2 324, 1987 SCC (SUPP) 188, (1987) 3 JT 64 (SC), 1987 4 JT 64, 1987 SCC (TAX) 288, (1987) 167 ITR 637, (1987) 2 SUPREME 257, (1987) 64 CURTAXREP 134

Bench: R.S. Pathak, Ranganath Misra, B.C. Ray

JUDGMENT

1. These are appeals by special leave and the impugned order in each of these appeals is of the Bombay High Court rejecting the application of the Commissioner of Income-tax, Bombay under Section 256(2) of the Income-tax Act of 1961. As in our opinion a question of law does arise out of the appellate order of the Tribunal in each of the cases, the Tribunal should have allowed the application under Section 256(1) of the Act and when that was refused and the High Court was moved, the High Court should have allowed the several applications under Section 256(2) of the Act and directed the Tribunal to state a case and refer the appropriate question for the opinion of the High Court.

2. Since we are directing a statement to be called for and the question to be referred, we refrain from expressing any opinion which might prejudice either of the parties before the High Court. We allow the appeals, vacate the orders of the Tribunal as also of the High Court confined to the question of reference and direct the following question to be referred by the Tribunal to the High Court for its opinion:

Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the expenditure by way of secret commission was deductible under Section 37(1) of the Act in computing the business income of the assessee?