

## **Upper India Publishing House (P) Ltd. vs Commissioner Of Income Tax, Lucknow on 4 December, 1978**

**Equivalent citations: AIR1979SC1724, [1979]117ITR569(SC), (1980)3SCC54, AIR 1979 SUPREME COURT 1724, 1979 TAX. L. R. 1196, (1979) 1 TAXMAN 365, (1979) 10 CURTAXREP 101, (1979) 117 ITR 569, 117 ITR 569**

**Bench: P.N. Bhagwati, R.S. Pathak, V.D. Tulzapurkar**

### **ORDER**

1. There are two questions in respect of which a reference has been directed by the H. C. on the application of the Revenue under Section 256(2) of the Income-tax Act 1961. So far as the first question is concerned, it is undoubtedly a question of law and could properly form the subject-matter of a reference but the second question as framed is clearly a question of fact and we fail to see how it could be directed to be referred by the High Court. The question whether a particular expenditure on rent is excessive and unreasonable or not is essentially a question of fact and does not involve any issue of law and hence we are of the view that the second question ought not to have been directed to be referred by the High Court. But if the second question could not form the subject-matter of a reference, then obviously the first question becomes academic, because Section 40A(2)(a) cannot have any application, unless it is first held that the expenditure on rent was excessive or unreasonable. We accordingly allow the appeal and set aside the order of reference made by the High Court. There will be no order as to costs of the appeal.