

**(2001) 07 P&H CK 0217**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Income-tax Reference No. 26 of 1986

Highway Cycle Industries Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

**Date of Decision:** July 12, 2001

**Acts Referred:**

- Income Tax Act, 1961 - Section 37
- Payment of Bonus Act, 1965 - Section 15, 15(1)

**Citation:** (2002) 253 ITR 66

**Hon'ble Judges:** Jawahar Lal Gupta, J; Ashutosh Mohunta, J

**Bench:** Division Bench

**Advocate:** A.K. Mittal, for the Appellant; R.P. Sawhney and Rajesh Bindal, for the Respondent

**Judgement**

Jawahar Lal Gupta, J.

This is a reference by the Income Tax Appellate Tribunal at the instance of the assessee. The following two questions have " been referred to this court for opinion :

"(1) Whether, on the facts and circumstances of the case, the Tribunal was right in law in confirming the disallowance of the assessee's claim of Rs. 25,782 as surtax liability while computing its taxable income for the assessment year 1977-78 ?

(2) Whether, on the facts and circumstances of the case, the Tribunal was justified in holding that "set on of bonus" as per Section 15(1) of the Payment of Bonus Act, 1965, at Rs. 2,56,042 is not allowable as business expenditure in computing the assessee's income for the assessment year 1977-78 ?"

2. The assessee is engaged in the manufacture and sale of bicycle freewheels. In its Income Tax return for the assessment year 1977-78, the assessee claimed deduction of Rs. 25,782 on account of surtax liability under the provisions of the Companies

(Profits) Surtax Act, 1964. It also claimed a deduction of Rs. 2,56,042 on account of "allocable surplus set on for bonus liability under the Payment of Bonus Act". This claim was disallowed. Having lost up to the Tribunal, the assessee has sought the reference and has now come to this court.

3. Mr. Ajay Mittal, learned counsel for the assessee, contends that a tax paid by the assessee is not income but is a deductible part of the expenditure. He further submits that the action of the Revenue in disallowing the amount kept for set on of bonus u/s 15(1) of the Payment of Bonus Act, 1965, could not have been denied as a permissible deduction.

4. Mr. Sawhney, on the other hand, has pointed out that both the questions are concluded against the assessee by pronouncements of different courts in so far as surtax is concerned.

5. With regard to the first question, it has been pointed out that the matter is concluded between the parties by the decision of this court. Reference has been made to [Highway Cycle Industries Ltd. Vs. Commissioner of Income Tax](#) . It has been further pointed out that another Division Bench has taken a similar view in [H.M.M. Limited Vs. Commissioner of Income Tax](#) . Similarly, with regard to the deduction on account of the bonus as contemplated u/s 15(1) of the Payment of Bonus Act, 1965, it has been pointed out that the Madhya Pradesh High Court has taken a view against the assessee in [Malwa Vanaspati and Chemical Co. Ltd. Vs. Commissioner of Income Tax](#) . Even the Andhra Pradesh High Court has taken a similar view in [Rayalaseema Mills Limited Vs. Commissioner of Income Tax, Andhra Pradesh-I](#) .

6. On a consideration of the matter, we find that the decisions conclude the answer to the questions against the assessee. Respectfully following these decisions, we answer both the questions against the assessee and in favour of the Revenue.

7. The reference is disposed of accordingly. No costs.