

**(2005) 03 AHC CK 0273**

**Allahabad High Court**

**Case No:** IT Reference No. 135 of 1992 1 March 2005

Commissioner of Income Tax

APPELLANT

Vs

Rampur Distillery and Chemicals  
Co. Ltd.

RESPONDENT

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**Date of Decision:** March 1, 2005

**Acts Referred:**

- Income Tax Act, 1961 - Section 256, 40A, 46A

**Citation:** (2006) 154 TAXMAN 168

**Hon'ble Judges:** R.K. Agrawal, J; Prakash Krishna, J

**Bench:** Full Bench

**Advocate:** A.N. Mahajan, for the Revenue and Vikram Gulati, for the Assessee, for the Appellant;

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### **Judgement**

@JUDGMENTTAG-ORDER

1. The Income Tax Appellate Tribunal, New Delhi, has referred the following two questions of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), for opinion to this court:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in allowing the assessee's claim for investment allowance on the ground that the products manufactured by the assessee was not hit by item 1 of the Eleventh Schedule to the Income Tax Act ?

2 Whether, on the facts and in the circumstances of the case, the Tribunal was right in law to hold that the cash allowance and reimbursement paid to the employees does not amount to perquisites within the meaning of section 40A(5) ?"

2. The reference relates to the assessment year 1984-85.

3. The respondent is a public limited company. It is engaged in the manufacture of Indian Made Foreign and Country Liquor. It had claimed deduction on account of investment allowance of Rs. 2,51,500 in respect of additions made to the plant and machinery which was rejected by the assessing officer on the ground that apart from manufacturing industrial alcohol, the respondent was manufacturing IMFL and country liquor, which come under the prohibited items included in Eleventh Schedule to the Act.

4. The assessing officer had disallowed the sum of Rs. 24,362 by invoking the provisions of section 46A(5) of the Act, which represented cash payments of three of its employees. Feeling aggrieved, the respondent preferred the appeal before the Commissioner (Appeals) who has allowed the claim of investment allowance and also deleted the disallowance made u/s 40A(5) of the Act. The Commissioner (Appeals) has held that the respondent's production of industrial alcohol was 86.3 per cent and that of IMFL and country liquor was only 13.7 per cent. He further held that the cash reimbursement paid to the employees does not amount to perquisites. The revenue feeling aggrieved preferred an appeal before the Tribunal. However, the Tribunal has upheld the order passed by the Commissioner (Appeals) and rejected the appeal filed by the revenue on these two issues.

5. We have heard Sri AN Mahajan, learned standing counsel for the revenue and Sri Vikram Gulati, learned counsel appearing for the respondent.

6. We find that this court in ITR No. 73 of 1986

7. So far as the second question is concerned, we find that the Apex Court in the case of [Commissioner of Income Tax, Bombay, etc. Vs. M/s. Mafatlal Gangabhai and Co. \(P\) Ltd.](#), has held that the payments made in cash to the employees are not covered by section 40A(5) of the Act as it does not amount to perquisites.

8. Respectfully following the aforesaid decisions, we answer the both the questions referred to us in the affirmative, i.e., in favour of the assessee and against the revenue. There shall be no order as to costs.