

## Commissioner of Income Tax Vs Alimbeg Salimbhai

**Court:** Madhya Pradesh High Court

**Date of Decision:** March 15, 1996

**Acts Referred:** Beedi and Cigar Workers (Conditions of Employment) Act, 1966 " Section 21, 26, 27

**Citation:** (1996) 135 CTR 124 : (1997) 224 ITR 166 : (1996) 89 TAXMAN 383

**Hon'ble Judges:** A.K. Mathur, C.J; S.K. Kulshrestha, J

**Bench:** Division Bench

**Advocate:** V.K. Tankha, for the Appellant; B.L. Nema, for the Respondent

### Judgement

1. Earlier an application u/s 256(2) of the Income Tax Act, 1961, was filed by the Revenue for calling a reference from the Tribunal and in

pursuance of an order dated September 22, 1989, in M. C. C. No. 446 of 1986 (see Commissioner of Income Tax Vs. Alimbeg Salimbhai, ), the

Tribunal has stated the case and referred the following question for answer by this court (at page 363) :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the liability of the assessee for the amount of

Rs. 2,03,722 was an ascertained liability under Section 26 of the Bidi and Cigar Workers (Conditions of Employment) Act, 1966, and that the said

amount was deductible in computing the income of the assessee ?

2. The assessee is a partnership firm engaged in manufacture and sale of bidis. The year of assessment involved is 1976-77, the previous year

ending on Diwali of 1975. The assessee claimed deduction of Rs. 2,03,722 on account of holiday wages and leave with wages under Sections 21,

26 and 27 of the Bidi and Cigar Workers (Conditions of Employment) Act, 1966. The Income Tax Officer did not actually verify the computation

of the claim made by the assessee. However, on scrutiny he found that no actual payment was made. According to him, it was simply a provision

made by creating a reserve out of profits. He held that it was not an existing liability but only a contingent liability. The Income Tax Officer thus

made disallowance of the claim. The assessee went in appeal before the Commissioner of Income Tax (Appeals), who following the earlier orders

of the Tribunal allowed the claim of the assessee. The Revenue came in appeal before the Tribunal and the Tribunal following the judgment of this

court in Kalekhan Mohammed Hanif Vs. Commissioner of Income Tax, affirmed the claim of the assessee and allowed deductions in terms of the

statutory liability. Thereafter the Department moved this court for calling for a reference and this court directed to make a reference and,

accordingly, the aforesaid question has been sent by the Tribunal for answer by this court. Suffice to say that a similar question came up before this

court in Kalekhan Mohammed Hanif Vs. Commissioner of Income Tax, and this court answered the question in favour of the assessee and against

the Revenue. Likewise, in the case of the same party in another case Commissioner of Income Tax Vs. Alim Beg Salim Bhai, ), the question has

been answered in favour of the assessee and against the Revenue. It has been observed thus (at page 768) :

The fact that provision has been made in the accounts of the assessee maintained according to the mercantile system, to provide for the liability, it

has already incurred during the relevant year u/s 21 of the Bidi and Cigar Workers (Conditions of Employment) Act, 1966, is beyond controversy.

The case does not involve any dispute about the quantification of this liability. The only question, therefore, is whether this statutory liability having

been incurred by the assessee in the manner stated and provision having been made in the assessee's accounts maintained according to the

mercantile system, the same was rightly allowed as a permissible deduction by the Tribunal. We find that the matter is concluded by the decisions

of this court particularly in Addl. Commissioner of Income Tax Vs. Kale Khan Mohammad Hanif, and Kalekhan Mohammed Hanif Vs.

Commissioner of Income Tax, , wherein similar deductions were allowed on the same principle. Since the point is settled by the decisions of this

court following the principle laid down by the Supreme Court in The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax,

(Central), Calcutta, , the question now is merely of an academic character and no useful purpose would be served by requiring the reference to be

made for deciding the point concluded in this manner.

3. In view of the fact that between the same parties on a similar question reference was sought by the Revenue and the same was rejected for the

aforesaid reason, it is not proper for this court to take a different view. Before parting, we may mention that in another case of (Mohd. Hanif v.

CIT [1997] 223 ITR 517--M. C. C. No. 270 of 1987), which came before us under the wealth-tax reference, we have found that some of the

parties have utilised the amount for the benefit of their business. Therefore, it would be open to the assessing authorities to probe into the matter

and if it is found that this amount kept reserved under the statutory liability under the Madhya Pradesh Beedi and Cigar Workers" (Conditions of

Employment) Act, 1966, has not been disbursed to the workers towards their wages and the same is found to have been invested in the business,

then it would be open to the authorities to proceed under the relevant provisions of law for assessment of the liabilities. However, so far as the

present case is concerned, we answer the reference in favour of the assessee and against the Revenue.