

**(2001) 07 CAL CK 0001**

**Calcutta High Court**

**Case No:** IT Ref. No. 159 of 1993 2 July 2001

Commissioner of Income Tax

APPELLANT

Vs

COATES OF INDIA LTD.

RESPONDENT

**Date of Decision:** July 2, 2001

**Acts Referred:**

- Income Tax Act, 1961 - Section 31

**Citation:** (2001) 170 CTR 325

**Hon'ble Judges:** Y.R. Meena, J; Arunabha Barua, J; Arunaba Barua, J

**Bench:** Full Bench

### **Judgement**

Y.R. Meena, J.

On an application u/s 256(1) of the Income Tax Act, 1961 the Tribunal has referred following questions, set out at p. 2 of the paper book for our opinion.

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in directing the assessing officer not to take into account the sum of Rs. 4,45,305 being expenditure on repair of motor cars for computing the disallowance u/s 37(3A)/(3B) of the Income Tax Act, 1961 ?"

2. The assessee-company derives income from manufacturing and sale of printing ink and synthetics resins. The return of income along with audited accounts filed on 9-8-1985, assessment year is 1985-86. During the course of examination of the return Income Tax Officer noticed that assessee has claimed sum of Rs. 4,45,305 being expenditure on repairs of motor cars. The Income Tax Officer has disallowed part of the amount under provisions of sections 37(3A) and (3B) of the Income Tax Act, 1961. In appeal before the Commissioner (Appeals), the Commissioner (Appeals) has confirmed the view taken by assessing officer. In appeal before the Tribunal assessee placed reliance on the judgment of Bombay High Court in the case of [Commissioner of Income Tax Vs. Chase Bright Steel Ltd. \(No. 1\)](#), and the

decision of the Delhi Bench of the (1992) 40 ITD 114 following the view taken by the Bombay High Court the Tribunal held that the expenses relating to repair of motor cars are covered by section 31 and, therefore, did not come within the ambit of section 37(1) read with 37(3A) of the Act.

3. Learned counsel for the revenue submits that in the earlier assessment year in case of this assessee the court has taken the view that the amount of reimbursement of motor car expenses incurred by employees in using their own motor car in performance of their duties and for the business of the company, provisions of section 37(3A)/(3B) of Income Tax Act, 1961 are applicable as the reimbursement for running and maintenance of car is covered by Explanation to sub-section (3A) of section 37 of the Act.

4. Learned counsel for the assessee Dr. Pal has submitted that "repairs" and "maintenance" are two different expressions. The expenses on repair of motor car is allowable u/s 31 of the Income Tax Act, therefore, there is no need to go for the deduction u/s 37(1) of the Income Tax Act and when the expenditure is not allowed u/s 37(1), the provisions of section 37(3A)/(3B) are not attracted for any disallowance. We placed reliance on the decision of this court in the cases Commissioner of Income Tax Vs. Orient Paper and Industries Ltd., Commissioner of Income Tax Vs. Tungabhadra Industries Ltd., Commissioner of Income Tax Vs. Price Waterhouse, and National Engineering Industries Ltd. Vs. Commissioner of Income Tax.

5. In CIT v. Orient Paper and Industries Ltd. (supra) at pp 474 and 475 this court has observed that repair on motor car would come u/s 31 and, therefore, section 37(3A)/(3B) will not apply. The similar view has been taken by this court in the later decision that is National Engineering Industries Ltd. v. CIT (supra) wherein this court has held that expenditure on repair and insurance of motor cars, provident fund and bonus paid to drivers, the ceiling and restriction u/s 37(3A) is not applicable.

6. The decision relied upon by revenue relates to running and maintenance of the motor car and not repair of car when the expenditure on repair is directly covered by the decision of this court in the case of Orient Paper and Industries Ltd. (supra) we find no reason to interfere in the order of Tribunal.

In the result, we answer the question in affirmative, i.e., in favour of the assessee and against the revenue.

The reference so made is accordingly disposed of.