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**(2001) 10 CAL CK 0006**

**Calcutta High Court**

**Case No:** Matter No. 3243 of 1988

Empire Plantations  
(India) Ltd. and Another

APPELLANT

Vs

Union of India (UOI)  
and Others

RESPONDENT

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**Date of Decision:** Oct. 18, 2001

**Acts Referred:**

- Income Tax Act, 1961 - Section 3, 3(4)

**Citation:** (2002) 253 ITR 140 : (2003) 126 TAXMAN 41

**Hon'ble Judges:** Kalyan Jyoti Sengupta, J

**Bench:** Single Bench

**Advocate:** Pal, for the Appellant; Ram Chandra Prasad, for the Respondent

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### **Judgement**

Kalyan Jyoti Sengupta, J.

By this writ petition the petitioner has challenged two orders passed by the Income Tax Officer, "D" Ward, Company, District II, Calcutta, being respondent No. 2 and the Commissioner of Income Tax, West Bengal-II, who have rejected the petitioner's application for obtaining consent to change the previous year. Writ petitioner No. 1 is a company carrying on the business of plantation and production and marketing of tea. Petitioner No. 2 is the principal officer of petitioner No. 1. Petitioner No. 1 is an Income Tax assessee and at all material times had and still has been maintaining its accounts from April 1 of each year up to March 31, of the next year, i.e., the previous year u/s 3(4) of the Income Tax Act, 1961 (as it was prevailing at that time), applicable to petitioner No. 1 assessee-company was from April 1 to March 31.

2. Briefly stated the facts of this case are that in the year 1983-84 at the time of preparing and finalising the accounts of the petitioner-company it was ascertained that at the end of March a substantial quantity of tea remained unsold and as such the said unsold tea had to be valued at estimated price for the purpose of accounting. It was thus realised that the

inconvenience of fixing the estimated price for unsold stock of tea could be avoided only by changing the accounting year ending from March 31 to June 30, since by that time a good quantity of unsold stock of tea could be sold, and the assessee-company need not settle its accounts on the basis of imaginary and estimated price of its products.

Considering the practical inconvenience and to remove the same permanently the management decided to change the previous year for the accounting purposes.

Therefore, the petitioner company after having adopted valid resolution dated March 29, 1985, filed an application dated June 17, 1985, before respondent No. 2 for according consent to change the previous year as required u/s 3(4) of the Income Tax Act, 1961. At that point of time, the law was that the assessee could change the previous year with the consent of the concerned Income Tax Officer. However, no consent was accorded to the writ petitioner assessee and as such the writ petitioner could not effect the change of previous year. Against the order of refusal to accord the consent, the writ petitioner filed an application for revision of the above order with respondent No. 3 who, however, has rejected the application for revision and refused to accord permission and/or consent.

3. Dr. Pal, the learned senior advocate appearing in support of this application, contends that though the power u/s 3(4) of the aforesaid Act conferred upon the Income Tax Officer is a discretionary one but this has to be exercised judicially. Upon a true and proper interpretation of the said Section it would emerge that according consent is a rule and refusal is an exception, however, such consent can always be given on certain terms and conditions which may be imposed to protect the Revenue. In this case, he contends, that the petitioner all the time was and still is willing to make good any loss of revenue and on the basis of this undertaking the consent should have been given. In fact, he has drawn my attention to the reason for refusal in giving consent by the respective authorities and submits that if the loss which might be suffered by the Revenue is made good, there cannot be any difficulty in giving consent. He has also drawn my attention to a Division Bench judgment of the Guwahati High Court which has held on identical facts and circumstances of a case that consent could be given if the assessee is willing to make good the loss.

4. He further contends that by virtue of the interim order the assessment of the petitioner for all the pending years has not yet been done though his client has filed returns for the assessment year 1985-86 but the assessment has been stayed in view of the interim order.

5. Mr. Ram Chandra Prasad, the learned advocate, while opposing this application contends that according consent u/s 3(4) of the aforesaid Act is discretionary and it cannot be claimed as a matter of right when the consent has been refused. It is not for the writ court to examine justification in exercise of discretion in negative way nor reasonableness of reasons. He points out to the reasons given by both the authorities and contends that if the previous year is allowed to be changed then there will be no assessment for one year and the Revenue will be suffering loss to a great extent. As such this application is liable to be dismissed.

6. Having heard the respective contentions of the learned advocates, in this case the only point which falls for consideration is whether the Income Tax Officer and the Revising Officer, viz., respondent No. 3, are justified in refusing to give consent to change the previous year or not.

7. It appears from the two orders as well as from the stand taken in the affidavit-in-opposition that the reason for refusal to give consent is that the Revenue will be suffering Joss. Upon a careful examination of the order of the Revising Officer it appears to me that he has merely accepted mechanically the order of the Income Tax Officer without applying his own mind. He has not examined on the subsequent development whether the consent could have been given or not. In the course of hearing of the revision application it was specifically stated by the petitioner assessee that it was ready to give and indeed gave an undertaking that the loss which might result in change would be made good, however, he did not accept this undertaking. In my view, he had fallen in error by not taking into consideration the undertaking of the assessee petitioner. Therefore, he has failed to exercise his jurisdiction by not taking into consideration the petitioner's undertaking. If the impediment for granting consent is removed then there cannot be any difficulty to grant consent and this has been overlooked totally by the Revising Officer.

8. The judgment of the Division Bench of the Guwahati High Court on identical facts has accepted that in the event the assessee undertakes to make good the loss which might result in change of the previous year, the consent should not be withheld. Accordingly, the direction was given by the Division Bench of the Guwahati High Court to consider the application afresh of the assessee-company in that matter for change in the previous year in the light of the observation made therein.

9. Upon a careful reading of Section 3(4) of the Income Tax Act, 1961 (as it was then prevailing) it appears to me that the consent cannot be withheld unreasonably. The assessee is always free to change his accounting year for the purpose of furnishing return and however this cannot be done at the loss or prejudice of the Revenue and that is why consent of the Income Tax Officer has been preserved. If it is found that no loss would be suffered in the change of previous year normally right and/or liberty of the assessee cannot be fettered by withholding consent.

10. Therefore, I am of the view that both the Income Tax Officer being respondent No. 2 and the Revising Officer being respondent No. 3 have unreasonably withheld the consent, as such I set aside these two orders. After holding as above I could have remanded this matter for fresh consideration. However, having regard to the fact that this is an old matter, and moreover when the returns have been filed and those have not been assessed as yet because of the interim order I dispose of the application by the following order :

11. Respondent No. 2 now shall give consent for effecting the change of the previous year as applied for, in the event the petitioner gives undertaking to make good the loss of revenue which might result in such change and shall pay the same immediately after the order of assessment. The petitioner, therefore, shall file revised returns within a period of twelve weeks from the date of communication of this order, failing which, this application will stand dismissed and the order passed hereunder will stand recalled.

12. There will be no order as to costs.