**(1989) 02 CAL CK 0013**

**Calcutta High Court**

**Case No:** Income-tax Reference No. 14 of 1983

BROOKE BOND INDIA LTD. — APPELLANT

Vs

COMMISSIONER OF Income Tax. — RESPONDENT

Date of Decision: Feb. 17, 1989

Acts Referred:

- Income Tax Act, 1961 - Section 35B

**Citation:** (1992) 95 CTR 89 : (1991) 95 CTR 89 : (1992) 193 ITR 390 : (1991) 58 TAXMAN 33

**Hon'ble Judges:** Suhas Chandra Sen, J; Baboo Lall Jain, J

**Bench:** Full Bench

**Judgement**

SUHAS CHANDRA SEN J. - The Tribunal has referred the following two questions of law u/s 256 (1) of the Income Tax Act, 1961 :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in disallowing the claim for weighted deduction u/s 35B on the following items :

| | | Rs. |
|---|---|---|
| (i) | Packing credit interest | 20,73,537 |
| (ii) | Post-due/overdue interest on export | 8,24,280 |
| (iii) | Bank charges including cost of remittance | 4,06,141 |
| (iv) | Exchange losses in export | 19,965 |
| (v) | Freight and insurance | 1,05,76,274 |

(vi) Packing and handling 92,87,092

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in disallowing the claim for deduction of tax under the Companies (Profits) Surtax Act, 1964, in computing the assessees total income ?"

The relevant assessment year is 1975-76 (accounting year ended on 29th June, 1974)

The first question relates to weighted deduction claimed by the asses-see. Since there are as many as six items in respect of which deductions have been claimed, this question will have to be examined itemwise.

Section 35B is as under :

"35B. (1) (a) Where an assessee, being a domestic company or a person (other than a company) who is resident in India, has incurred after the 29th day of February, 1968, whether directly or in association with any other person, any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) referred to in clause (b), he shall, subject to the provisions of this section, be allowed a deduction of a sum equal to one and one-third times the amount of such expenditure incurred during the previous year :

Provided that in respect of the expenditure incurred after the 28th day of February, 1973, by a domestic company, being a company in which the public are substantially interested, the provisions of this clause shall have effect as if for the words one and one-third times, the words one and one-half times had been substituted.

(b) The expenditure referred to in clause (a) is that incurred wholly and exclusively on -

(i) advertisement or publicity outside India in respect of the goods, services or facilities which the assessee deals in or provides in the course of his business;

(ii) obtaining information regarding markets outside India for such goods, services or facilities;

(iii) distribution, supply or provision outside India of such goods, services or facilities, not being expenditure incurred in India in connection therewith or expenditure (wherever incurred) on the carriage of such goods to their destination outside India or on the insurance of such goods while in transit;

(iv) maintenance outside India of a branch, office or agency for the promotion of the sale outside India of such goods, services or facilities;

(v) preparation and submission of tenders for the supply or pro-vision outside India of such goods, services or facilities and activities incidental thereto;

(vi) furnishing to a person outside India samples or technical information for the promotion of the sale of such goods, services or facilities;

(vii) travelling outside India for the promotion of the sale outside India of such goods, services, or facilities, including travelling outward from, and return to, India;

(viii) performance of services outside India in connection with, or incidental to, the execution of any contract for the supply outside India of such goods, services or facilities;

(ix) such other activities for the promotion of the sale outside India of such goods, services or facilities as may be prescribed;

Explanation 1. - In this section domestic company shall have the meaning assigned to it in clause 2 of section 80B.

Explanation 2. - For the purposes of sub-clause (iii) and sub-clause (viii) of clause (b), expenditure incurred by an assessee engaged in the business of -

(i) operation of any ship or other vessel, aircraft or vehicle, or

(ii) carriage of, or making arrangements for carriage of, passengers, livestock, mail or goods,

on or in relation to such operation or carriage or arrangement for carriage (including in each case expenditure incurred on the provision of any benefit, amenity or facility to the crew, passengers or livestock) shall not be regarded as expenditure incurred by the assessee on the supply outside India of services or facilities.

(2) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure referred to in sub-section (1), deduction shall not be allowed in respect of such expenditure under any other provision of this Act for the same or any other assessment year."

The assessee is allowed deduction of a sum equal to one and one-third times the amount of the expenditure incurred during the previous year if certain conditions laid down in section 35B are fulfilled. Business expenditure is normally allowable u/s 37 the Income Tax Act. No question of weighted deduction arises when deductions are allowed u/s 37. In order to claim weighted deduction, the assessee must bring all the facts on record which justify the claim. It is well settled that it is for the assessee to prove his case in order to claim any deduction.

All expenditure in connection with the export sales is not to be allowed as weighted deduction u/s 35B. Weighted deduction can be allowed only in respect of the expenditure which has been specifically mentioned in the sub-clauses (i) to (ix) of clause (b) of section 35B (1).

The expenditure that is to be allowed under sub-clause (viii) of section 35B (1) (b) must be incurred on "performance of services outside India in connection with, or incidental to the execution of any contract for the supply outside India of such goods, services or facilities". The performance of services must be outside India. The rest of sub-clause (viii) of section 35B (1) (b) really restricts the scope of the expression "performance of services outside India" by saying "in connection with, or incidental to, the execution of any contract for the supply outside India of such goods, services or facilities". If the performance of services does not take place outside India, then the assessee cannot avail of the benefit of this sub-clause and claim weighted deduction.

An argument was advanced by Dr. Pal on behalf of the assessee that what was needed to be seen was whether the expenditure was "incidental to the execution of any contract for the supply outside India of such goods, services or facilities". Any expenditure incurred for this purpose will have to be allowed. The contention of Dr. Pal was that sub-clause (viii) contemplated two types of situations. One type was of expenditure incurred on performance of services outside India in connection with any contract for supply outside India of goods, services or facilities. It also included any expenditure incurred incidental to the execution of any contract for supply outside India of such goods, services or facilities. Dr. Pal referred us to the judgment of the Madhya Pradesh High Court in Commissioner of Income Tax Vs. Vippy Solvex Product Private Limited, .

It appears to us that the construction suggested by Dr. Pal, if accepted, will lead to absurdity and such construction cannot be made without doing violence to the language employed in the statue. Clause (b) of section 35B (1) starts with the phrase "the expenditure referred to in clause (a) that is incurred wholly and exclusively on". Therefore, the expenditure must be "on" the things mentioned in sub-clause (viii) of clause (b) of section 35B (1). What has been mentioned in sub-clause (viii) is "performance of services outside India". Then the rest of sub-clause (viii) indicates that not any of every service outside India will qualify for weighted deduction but only such expenditure as has been incurred for "performance of services outside India in connection with, to incidental to, the execution of any contract for the supply outside India of such goods, services or facilities."

Moreover, the phrase "the execution of any contract for the supply outside India of such goods, services or facilities" must be in relation to performance of services outside India. The phrases "in connection with" or execution of any contract for supply outside India of such goods, services of facilities.

Therefore, in our view, unless it can be established that the expenditure was incurred on performance of services outside India, no weighted deduction can be allowed.

The case before the Madhya Pradesh High Court was really decided on the basis of the findings of fact arrived at by the Tribunal. There the assessee had manufactured and exported de-oiled cakes. It claimed deduction on account of (1) interest paid to bank on export packing credit account, (2) commission and brokerage for export, (3) postage, telephone and telegram expenses, and (4) bank commission on export packing credit account.

The Tribunal found that the assessee had paid commission and brokerage to various parties at different places, namely, Poland, Germany, London, etc. in connection with the export of its products. It was on account of this fact that the assessee was able to make export sales. The further finding of the Tribunal was that the assessee had maintained with the bank an export packing credit loan account and advances from this account were given only for the purchase of raw material for manufacturing goods to be exported outside India and these advances were made available only when the parties submitted a copy of the export contract entered into with the foreign party and this account was quite different from the normal cash credit account.

The Madhya Pradesh High Court was of the view that the findings of the Tribunal clearly indicated that the expenditure was incurred in connection with the execution of a contract for the supply of goods outside India. Therefore, the assessee was entitled to weighted deduction of Rs. 3,65,875 paid to the bank u/s 35B (1) (b) (vii) of the Act.

No arguments was advanced before the Madhya Pradesh High Court about the question whether it was necessary to establish that the expenditure must be on performance of services India. The only basis on which the case was disposed of was that the expenditure was in connection with, or incidental to, the execution of the contract.

Sub-clause (viii) of section 35B (1) (b) does not allow all expenditure incurred wholly and exclusively in connection with, or incidental to, the execution of any contract for supply of goods, services and facilities outside India. The allowance is restricted to expenditure which has been incurred wholly and exclusively on "performance of services outside India" when it is found that such services were "in connection with, or incidental to, the execution of any contract for the supply outside India of such goods, services or facilities".

Bearing in mind this principle let us now examine the claims made by the assessee itemwise. The first claim is in respect of packing credit interest. The amount claimed as weighted deduction is of a sum of Rs. 20,73,537. The Income Tax Officer disallowed this claim by a general observation to the following effect :

"Export markets development allowance u/s 35B :-

In the original return filed on 26th June, 1975, the assessee claimed deduction u/s 35B of the Income Tax Act of a sum of Rs. 2,80,507. But, in the latest return filed on 7th February, 1979, the assessee claimed such deduction u/s 35B at a sum of Rs. 1,30,88,432. The assessee has also given a statement showing the expenditure in respect of which deduction u/s 35B had been claimed. On going through the statement (revised statement No. 6) I have come across several expenditure which do not come within the purview of the said section. Amongst others, the assessee has claimed expenditure to the extent of Rs. 1,04,76,274 as well as Rs. 92,87,092 in respect of freight and insurance as well as packing and handling, respectively. In my view, these expenditures do not call for deduction u/s 35B as they do not subscribe to the export development of the assessee-company. The assessee has also claimed a sum of Rs. 5,98,274 being expenditure towards salaries of persons employed in India solely for export work. But the assessees claim in this respect can be accepted to the extent of 50% as it can never not availed of for domestic operations."

On appeal, the Appellate Assistant Commissioner held as follows :

"So far as packing credit interest was concerned, it was submitted by the learned representative that as per Governments scheme for export were allowed at concessional rate of interest only against confirmed export orders received by the exporters and such loans were allowed through separate banking accounts styled as "Packing Credit Loans". It was, therefore, claimed that the interest paid against packing credit was directly related to export promotion and hence it qualified for weighted deduction u/s 35B.

It was urged that such deduction was admissible u/s 35B (1) (b) (viii) of the Income Tax Act. The Income Tax Officer rejected the claim on the grounding that, in his opinion, such claim was not admissible under law.

I have carefully consider the objection of the Income Tax Officer and the arguments of the learned representative. I do not find Force in the above contentions of the learned representative. In fact, such claim had not been admitted by the Special Bench of the Tribunal, (BOM)bay, in Hemchand and Co. decline to interfere."

It has to be noted that the argument before the Appellate Assistant Commissioner was about packing credit interest which was payable on account of "loans for capital required before shipment for exports". Such loans were allowed through a separate banking account styled as "packing credit loans". It was not the case of the assessee at any point of time that the loans were utilised for rendering any service outside India in connection with export sales. In fact, before the Tribunal, no question of fact was urged. The only argument before the Tribunal was that the Special Bench decision of the Tribunal in the case of Hemchand and Co. v. ITO, decided on June 17, 1978, was distinguishable because the conclusions of the Special Bench were wrong in law. No argument was advanced to the effect that the Appellate Assistant Commissioner had wrongly appreciated the facts. It was not argued that the fact the

expenditure was in connection with services rendered outside India in connection with export sales.

Faced with this situation, Dr. Pal has argued that the facts were not properly appreciated at that stage because the implication of law was not properly understood at that time, and that now the case should be remanded for proper exploration of the facts.

In our view, this argument cannot be accepted. The assessee had definitely made out a case that the loan was taken for the purpose of meeting the expenses prior to the shipment of the goods. This fact has not been disputed at any stage. The assessee cannot turn round now at this stage and say that the expenditure was incurred for some other purpose. It will amount to hearing of the case de novo.

It was faintly suggested by Dr. Pal that the Tribunal had not properly appreciated the fact but no question of law challenging the findings of fact by the Tribunal has been raised. On the contrary, the question that was farmed by the assessee has been referred by the Tribunal and begins with the phrase "whether, on the facts and in the circumstances of the case". This phrase has not been interpreted in a number of cases by the Supreme Court to mean that the decision of the Tribunal was being challenged on the basis of the facts found by the Tribunal. If a question is framed in this way the findings of fact cannot be challenged.

Moreover, there does not appear to be any indication in the proper book to suggest that the Tribunal had failed to consider any fact which the assessee had placed before the Tribunal.

In our view, the Tribunal came to a correct conclusion on the dispute relating to packing credit interest.

The second item deals with post-due/overdue interest on exports. The finding of the Appellate Assistant Commissioner on this point is as follows :

"The next claim pertains to overdue interest. Such interest was charged by the banks in respect of discounted export bills met by the buyer beyond due dates or delayed remittance by the buyers bankers. It was therefore, argued that such interest was incurred in connection with exports business and as such qualified for weighted deduction.

I have carefully considered the objections of the Income Tax Officer and the explanation rendered by the learned representative. I feel that such interest was not incurred for the purpose of development of the export market. Such payment might be due after the transaction was made. But it was not incurred wholly and solely for the purpose of supply of goods to the foreign market. In the above analysis, the claim of the appellant fails and it is dismissed".

The finding of the Tribunal on this question is as follows :

"Another argument was that the decision of the Special Bench does not cover all the items claimed in the present case. Main stress was laid on the two items mentioned at serial Nos. (ii) and (iii), i.e., overdue interest on export bills and bank charges including the cost of remittances.

According to the representative of the assessee, this interest and the bank charges were incurred by the assessee because the foreign buyers delayed the payment of the bills to the banks and since the assessee got immediately money from the bank on presentation of the bills, the extra amount expended was, in fact, from performance of services outside India, which was definitely incidental to the execution of the contract for supply of goods outside India and, therefore, allowable under clause (viii) of section 35B (1) (b). According to him, the main intention of the Legislature was to encourage persons who secure foreign exchange and the services performed by the bank was nothing different from the service which the assessee would otherwise have to render to the foreign buyer by sending any of its employees to collect the price of the goods supplied abroad."

Dr. Pal argued that this interest had to be paid because of the buyers failure to pay the bills presented by the assessees bankers in time. Because of the buyers failure, the assessees bankers claimed larger interest. This claim will have to be allowed, because it was in connection with the service rendered outside India and was also incidental to export sales. It was argued that recovery of money was an internal part of the sale of goods and the bank, in the course of recovery of the amount, had incurred expenses for which the assessee was made liable to pay. This must be treated as expenditure incurred outside India in connection with or incidental to the export sales.

We are unable to uphold this argument. The bank merely discounted the bills raised by the assessee for the goods sold to the foreign purchaser. Because there was delay in payment of the bills, the bank charged interest and/or commission from the assessee. There is no finding that the bank had performed any service outside India nor can it be said that the banking services were rendered outside India in connection with, or incidental to, the execution of any contract. The export contract was executed by the assessee by despatching its goods to the foreign purchasers. The assessee took advantage of the usual banking mechanism for realisation of the price of its goods by having its bills discounted by the bank. The bank did not pay the seller the full amount of the bill. The amount of discount was retained by the bank from the bill amount. It was observed in the case of Lomax v. Peter Dixon and Co. [1943] 2 All ER 255 (CA), that discount is the reward which a person discounting a bill receives for his money. The discounting was done in India and the bank also realised the bank charges and interest in India. By the process of discounting of the bills, the bank did not execute any contract for supply of goods outside India. The assessee realised the price of the goods through this banking mechanism even before the payment was made by the purchaser. The bank did not render any

service outside India by discounting the bills of the assessee in India. We do not see any reason to interfere with the order of the Tribunal.

The third item relates to bank charges including the cost of remittance amounting to Rs. 4,06,141. Here the finding of the Appellate Assistant Commissioner is as follows :

"Post-due/overdue interest :

The next claim pertains to overdue interest. Such interest was charged by the banks in respect of discounted export bills met by the buyer beyond due dates of delayed remittance by the buyers bankers. It was, therefore, argued that such interest was solely incurred in connection with export business and as such it qualified for weighted deduction."

I have carefully considered the objections of the Income Tax Officer and the explanation rendered by the learned representative. I feel that such interest was not incurred for the purpose of developing the export market. Such payment might be due after the transaction was made. But it was not incurred wholly and solely for the purpose of supply of goods to the foreign market. In the above analysis, the claim of the applicant fails and it is dismissed.

Bank charges availed of :

The claim of bank charges amounting to Rs. 4,06,141 for weighted deduction under this head, in my opinion, was not sound. Such interest was calculated after actual exports had been made and was thus posterior to the activity of export. This had no connection with the fact of developing of export market, nor was such expenditure incurred wholly or exclusively in performance of services outside India in connection with, or incidental to, execution of such contract for supply of goods outside India.

The argument of the learned representative was thus far-fetched and must be repelled. The Income Tax Officers action is upheld. The Tribunal held that another argument was that the decision of the Special Bench does not cover all the items claimed in the present case. Main stress was laid on the two items mentioned at Sl. Nos. (ii) and (iii), i.e., overdue interest on export bills and bank charges including the cost of remittances.

According to the representative of the assessee, this interest and bank charges were incurred by the assessee because the foreign buyers delayed the payment of the bills to the banks and since the assessee got immediately money from the bank on presentation of the bills, the extra amount expended was in fact for performance of services outside India, which was definitely incidental to the execution of the contract for supply of goods outside and, therefore, allowable under clause (viii) of section 35B (1) (b). According to him, the main intention of the Legislature was to encourage persons who secure foreign exchange and the service performed by the bank was nothing different from the service which the assessee would otherwise

have to render to the foreign buyer by sending any of its employees to collect the price of the goods supplied abroad. To our mind, there is little force in this contention. In this behalf, we may refer to paragraph 36 of the judgment of the Special Bench, which reads as under :

"Bank commission paid by the assessee for which weighted deduction was claimed is what is charged by its bank for the discounting facilities afforded. We do not find any way to bring such expenditure within any one of the sub-clauses to section 35B (1) (b). The expenditure incurred by the assessee is in that sense not on any activity directly connected with the export but for the early realisation of the price of the goods exported or for the service rendered by the bank in connection therewith. A faint attempt was made before us to suggest that what the bank charged by way of commission was for the services it rendered outside India in collecting the price of the goods from the foreign buyer and, therefore, the expenditure must be taken as coming within sub-clause (viii). When assuming that the commission paid was for such services, the argument overlooks the fundamental fact that services referred to in that sub-clause are in connection with or incidental to the execution of any correct for the supply of goods, services or facilities outside India. On this too, we hence confirm the decision of the Appellate Assistant Commissioner."

In view of our observations, whatever be the merits of the assessees argument, the same should be deemed to have been fully considered and rejected by the Special Bench in the aforesaid discussion. We, therefore, do not purpose to interfere in this behalf.

Dr Pal argued that the liability to pay had arisen in the course of the export sale and also for the service rendering by the bank outside India. This service was rendered on behalf of the assessee and the finance was arranged by the bank and this formed an integral part of the activity of the assessee for export sale and realisation of the price and so it must be allowed.

But in our view, thus is not what is contempted by sub-clause (viii). The interest and bank charges must be shown to have been incurred for performance of service outside India. If there is any delay in realisation of the price for which an extra amount is charged by the bank which had made advance payment to the assessee, such payment will not be for the performance of service outside India.

The next item is exchange loss on export. Exchange loss takes place because of fluctuations in the exchange rate. If such fluctuation takes place, the assessee may gain or lose depending on the nature of the fluctuation. This cannot be equated with the expenditure for performance of service outside India. If any expenditure was actually incurred for performance of service outside India and the rupee value of that expenditure went up because of exchange fluctuation, then perhaps the assessee could have claimed that the assessee was entitled to a deduction in these circumstances. But that is not what has happened in this case.

The next item relates to freight and insurance. Here there is a specific finding that the expenditure on freight and insurance was incurred in India. The goods were shipped and, before shipment, the goods had to be properly insured and the freight had to be paid. But sub-clause (viii) allows only the expenditure for performance of service outside India to be deducted.

The last item relates to packing and handling charges. On this, the finding of the Appellate Assistance Commissioner is as follows :

"Packing and Handling :

It was urged that such expenditure represented cost of material and labour in providing services in connection with export. It was claimed that such expenditure of Rs. 92,87,092 was wholly and exclusively incurred for execution of the contract for supply of goods outside India.

It was pointed out by Sri S. R. Seth, chief accountant of the company, that unless special packing was done by the appellant, the foreign buyers did not accept such goods. Such packing charges were, therefore, exclusively incurred for the purpose of export of the goods. It was clarified by him further that, in the instant case. Messrs. Brooke Bond India supplied tea to foreign buyers in special containers or packets as approved by the foreign buyers for the purpose of safe delivery of tea abroad ensuring its quality and freshness. Such expenditure was, therefore, highly essential for the purpose of development of the export market. Unless proper packing was done to the satisfaction of the foreign purchasers of tea, the appellants export market would have suffered beyond measure. It was, therefore, strongly urged that such expenditure was admissible u/s 35B (1) (b) (viii). Learned representative pointed out that similar claims were admissible prior to amendment of the Act in 1981. Hence, the Income Tax Officer should not have rejected the claim of appellant towards weighted deduction.

I have carefully considered the objections of the Income Tax Officer and the explanations rendered by learned counsel as well as the chief accountant of the appellant-company. The above contentions of the learned representative did not carry conviction for the following reasons. Packing of materials was a very usual expenditure in the trade. There was no special feature involved which ensured for weighted deduction. Such an expenditure was of routine nature. It was not wholly and exclusively incurred for the purpose of performance of service outside India in connection with or incidental to execution of such contract for supply outside India of such goods. The terms of supply did not stipulate such conditions. Learned representative absolutely failed to establish his claim with evidence. Hence, contention is repelled as totally meritless."

The Tribunal, on appeal, upheld the order of the Appellate Assistant Commissioner. Here also, the difficulty of the assessee is that packing was done before the goods were shipped. It may be that the foreign buyers would like tea to be sold in

attractive packages. But the expenditure that was incurred for packing cannot be regarded as an expenditure incurred on performance of service outside India. There is no dispute that the packing was done in India.

Packing cost would be a part of the cost incurred by the assessee for making the goods marketable. The Madras High Court in the case of V.D. Swami and Co. Pvt. Ltd. Vs. Commissioner of Income Tax, Tamil Nadu-I, observed (at p. 428) :

"To maintain that weighted deduction is available even where expenditure is incurred inside India would go against the teeth of this specific exclusionary provision. A look at the other sub-clauses of section 35B (1) (b), such for instance as sub-clauses (i), (iv), (vi), (vii), (viii) and (ix), also allows the insistence of Parliament that the weighted deduction cannot be exigible unless the expenditure under the different heads are incurred outside India, a phrase which occurs again and again in the various sub-clauses. To accept learned counsels argument that the Indian situs of the export expenditure is no disqualification for eligibility for weighted deduction would be to bring in under one broad indiscriminate sweep, all expenses in an exporters business. If that were the position, Parliament need not have troubled to enact so many clauses in section 35B. The section would have been simpler and been enacted differently. We have, therefore, no hesitation in rejecting the construction of section 35B advocated by Mr. Subramaniam for the assessee."

This view is in consonance with the view taken by us that only specified items of expenditure have been given the benefit of weighted deduction u/s 35B. Those items of expenditure have been specifically enumerated in sub-clauses (i) to (ix) of clause (b). Until and unless the assessee will not be entitled to get the benefit of weighted deduction. It is for the assessee to establish the facts and obtain the benefit given by the statute. In the case of Birla Jute Manufacturing Co. Ltd. Vs. Commissioner of Income Tax, , it was observed (at p. 419) :

"It appears to us that in order to be eligible to weighted deduction on the export markets development allowance, it is required to be established by the assessee that the expenditure for which such deduction was bring claimed had been incurred wholly and exclusively for the specified purposes."

We are of the view that, on the facts of this case, the Tribunal has not committed any error of law in coming to the conclusion that weighted deduction was not available in respect of the various items of deductions claimed. Therefore, question No. 1 in answered in the affirmative and in favour of the Revenue.

Question No. 2 is concluded by a judgment of this High Court in the case of Molins of India Ltd. Vs. Commissioner of Income Tax, . This question is also answered in the affirmative and in favour of the Revenue.

It has been stated on behalf of the assessee that, in respect of question No. 2, certificate of fitness for appeal to the Supreme Court has already been granted u/s

261 of the Income Tax Act, 1961, in the case of Molins of India Ltd. Vs. Commissioner of Income Tax, . Let a certificate be issued accordingly, certifying that this is a fit case for appeal in the Supreme Court.

BABOO LALL JAIN. J. - I agree.