

**(1990) 11 CAL CK 0032**

**Calcutta High Court**

**Case No:** IT Ref. No. 58 of 1988

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

A. TOSH and SONS (P) LTD.

RESPONDENT

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**Date of Decision:** Nov. 9, 1990

**Citation:** (1992) 107 CTR 233

**Hon'ble Judges:** Bhagabati Prasad Banerjee, J; Ajit K. Sengupta, J

**Bench:** Full Bench

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### **Judgement**

AJIT K. SENGUPTA, J. :

In this reference under s. 256(1) of the IT Act, 1961 for the asst. yrs. 1979-80 to 1982-83 the following questions of law have been referred to this Court.

R.A. No. 5 (Cal) of 1988

"(1) Whether, on the facts and in the circumstances of the cases, the Appellate Tribunal was correct in law in holding that the interest on the fixed deposits amounting to Rs. 6,07,688 was not assessable as income of the assessee ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that the amount of Rs. 9,52,927 being the sum credited in the Profit & Loss Account could not be included in the total income of the assessee under s. 41(1) of the IT Act, 1961 ?"

R.A. No. 6(Cal) of 1988

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that the interest on fixed deposits amounting to Rs. 6,31,842 was not assessable as income of the assessee ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that the amount of Rs. 8,25,556 being the sum credited in the Profit & Loss Account could not be included in the total income of the

assessee under s. 41(1) of the IT Act, 1961 ?"

R.A. No. 7(Cal) of 1988

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that the interest on fixed deposits amounting to Rs. 7,80,331 was not assessable as income of the assessee ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that the amount of Rs. 7,90,968 being the sum credited in the Profit & Loss Account could not be included in the total income of the assessee under s. 41(1) of the IT Act, 1961 ?"

R.A. No. 8(Cal) of 1988

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that the interest on fixed deposits amounting to Rs. 10,31,875 was not assessable as income of the assessee ?

2. It is not in dispute that the first question in R.A. Nos. 5, 6 and 7 of 1988 is now concluded by the decision of this Court in the case of this assessee reported as [Commissioner of Income Tax Vs. A. Tosh and Sons \(P.\) Ltd.,](#) . Following the said decision we answer the first question in the said three reference applications in the affirmative and in favour of the assessee.

3. The second question in R.A. Nos. 5, 6 and 7 (Cal) of 1988 and only question in R.A. No. 8 (Cal) of 1988 are misconceived inasmuch as it appears that the assessee never claimed any deduction in respect of the sums credited in the Profit & Loss Account and accordingly, the provision of S. 41 (1) of the IT Act, 1961 could not be applied to the facts of this case.

4. In that view of the matter, we answer the aforesaid questions in this reference in the affirmative and in favour of the assessee.

There will be no order as to costs.

BHAGABATI PRASAD BANERJEE, J. :

I agree.