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**(2006) 11 CAL CK 0046**

**Calcutta High Court**

**Case No:** A.P.O. No. 49 of 2004 with W.P. No. 2031 of 2001

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| Jayashree Tea and Industries Ltd. | APPELLANT |
| Vs | |
| Commissioner of Income Tax and Others | RESPONDENT |

**Date of Decision:** Nov. 10, 2006

**Acts Referred:**

- Income Tax Act, 1961 - Section 143, 57(5)

**Citation:** (2007) 211 CTR 338 : (2007) 288 ITR 386 : (2008) 169 TAXMAN 6

**Hon'ble Judges:** Tapan Mukherjee, J; Ashim Kumar Banerjee, J

**Bench:** Division Bench

**Advocate:** Mukul Lahiri and Anirban Pramanick, for the Appellant;Md. Nizamuddin, for the Respondent

**Judgement**

1. The assessee-appellant for the relevant assessment year did not claim any deduction on account of leave encashment which they might have to pay to their employees under the scheme. The assessment was complete u/s 143 of the Income Tax Act, 1961 on March 8, 2000. The assessee accepted the same by not preferring any appeal from the order of assessment. On August 9, 2000, the apex court in an identical case delivered a judgment reported in Bharat Earth Movers Vs. Commissioner of Income Tax, Karnataka, , where the apex court held that such a liability on account of leave encashment was a liability in praesenti although it might be discharged at a later date and as such the assessee was entitled to claim appropriate deduction by debiting its profit and loss account and making a corresponding credit entry in the liability account. Soon after the judgment was delivered by the apex court the assessee applied for revision before the Commissioner within the statutory period of limitation. The Commissioner dismissed the revisional application by holding that the judgment in the case of Bharat Earth Movers Vs. Commissioner of Income Tax, Karnataka, was squarely applicable in the case of the assessee. However, he was not inclined to extend such benefit to the assessee in view of

the fact that such judgment could not be applied retrospectively. Before the Commissioner the assessee also relied upon another decision of the apex court in the case of The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, . In the said decision the assessee was maintaining its account on the mercantile basis. It had a sales tax liability for the particular assessment year. It did not claim any deduction as the assessment under the Sales Tax Act was not complete by the time the return was submitted. Soon after the submission of the return the sales tax authority assessed the assessee and imposed a liability of Rs. 1,49,776. The assessee immediately filed a revised return claiming deduction of such amount. It was contended on behalf of the Revenue that since no such deduction was claimed earlier at the time of filing of the return such liability accrued after the submission of the return could not be brought in by way of filing of the revised return. The apex court rejected the contention of the Revenue and held that even if the assessee under some misapprehension or mistake failed to make an entry in the books of account although he was entitled to in law to claim such deduction, such deduction must be allowed.

2. The Commissioner also agreed with the submission of the assessee made in support of their contention by relying on the proposition of law laid down in The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, . The Commissioner, however, felt that such benefit of the judgment in The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, could only be availed of by the assessee had the Bharat Earth Movers Vs. Commissioner of Income Tax, Karnataka, decision been pronounced before the assessment was complete.

3. Being aggrieved by and dissatisfied with the decision of the Commissioner dated July 13, 2001, appearing at pages 34-36 of the paper book the appellant-assessee filed a writ petition before this Court. The learned single judge dismissed the writ petition by the judgment and order under appeal. His Lordship was of the view that the benefit of the judgment in the case of Bharat Earth Movers Vs. Commissioner of Income Tax, Karnataka, could not be extended to the appellant as it would amount to double benefit in favour of the concerned assessee. His Lordship not only dismissed the writ petition but also directed the Revenue to reopen the assessments for the other years where the benefit of Bharat Earth Movers Vs. Commissioner of Income Tax, Karnataka, was extended to the appellant-assessee although according to the appellant those assessment years were not the subject-matter of the writ petition.

4. Being aggrieved by and dissatisfied with the judgment and order of the learned single judge the present appeal was filed by the assessee.

5. Mr. Mukul Lahiri, learned Counsel appearing in support of the appeal contended that when the return was submitted the assessee did not make any debit entry in the profit and loss account and corresponding credit entry in the liability account with regard to the leave encashment amount. The assessee, however, claimed deduction on the amount showing it as contingent liability which was disallowed by the The Kedarnath Jute Mfg.

Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, Mr. Lahiri contends before us that such liability was not a contingent liability and the Assessing Officer rightly rejected the claim for deduction on such amount. It was a mistake on the part of the assessee to claim it as contingent liability as held by the Supreme Court in the case of Bharat Earth Movers Vs. Commissioner of Income Tax, Karnataka, . Hence such mistake cannot debar the assessee to claim deduction by making appropriate entries in their balance-sheet and profit and loss account and thereby claiming deduction under the proper head on the basis of the decision of Bharat Earth Movers Vs. Commissioner of Income Tax, Karnataka, .

6. Mr. Lahiri further contends that the Commissioner was wrong in holding that the decision of Bharat Earth Movers Vs. Commissioner of Income Tax, Karnataka, could not be given retrospective effect since the assessment was complete before such judgment was delivered. In support of his contention, Mr. Lahiri has relied upon the apex court decision reported in Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others, . Paragraph 9 of the said decision was relied upon which is quoted below (page 2028):

The second contention need not detain us long. It is based primarily on the provisions of Section 57(5) of the Act. The contention is that since the provisions of that section give power to the Chancellor to terminate the services of a teacher only if he is satisfied that the appointment "was not in accordance with the law at that time in force" and since the law at that time in force, viz., on March 30, 1985, when the appellants were appointed, was the law as laid down in Bhakre"s case [1985] Lab IC 1481 which was decided on December 7, 1984, the termination of the appellants is beyond the powers of the Chancellor. The argument can only be described as naive. It is unnecessary to point out that when the court decides that the interpretation of a particular provision as given earlier was not legal, it in effect declares that the law as it stood from the beginning was as per its decision, and that it was never the law otherwise. This being the case, since the Full Bench and now this Court has taken the view that the interpretation placed on the provisions of law by the Division Bench in Bhakre"s case [1985] Lab IC 1481 was erroneous, it will have to be held that the appointments made by the University on March 30, 1985, pursuant to the law laid down in Bhakre"s case [1985] Lab IC 1481 were not according to law. Hence, the termination of the services of the appellants were in compliance with the provisions of Section 57(5) of the Act.

When, therefore, the services of the appellants are to be terminated in view of the change in the position of law and not on account of the demerits or misdemeanour of individual candidates, it is not necessary to hear the individuals before their services are terminated. The rule of audi alteram partem does not apply in such cases and, therefore, there is no breach of the principles of natural justice. In the result, we are of the view that there is no merit in this case. The appeal, therefore, stands dismissed. In the circumstances of the case, however, there will be no order as to costs.

7. Mr. Nizamuddin, learned Counsel appearing on behalf of the Revenue, has relied upon paragraph 7 of the decision of the apex court in the case of Harsh Dhingra Vs. State of Haryana and Others, which is quoted below (headnote):

Prospective declaration of law is a device innovated by the Supreme Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law it is deemed that all actions taken contrary to the declaration of law, prior to the date of the declaration are validated. This is done in larger public interest. Therefore, the subordinate forums which are bound to apply law declared by the Supreme Court are also duty bound to apply such dictum to cases which would arise in future. Since it is indisputable that a court can overrule a decision there is no valid reason why it should not be restricted to the future and not to the past. Prospective overruling is not only a part of constitutional policy but also an extended facet of stare decisis and not judicial legislation.

8. We have heard the parties at length. We have carefully perused the judgment and order under appeal. We have also carefully examined the ratio decided in the three apex court decisions cited by Mr. Lahiri referred to above.

9. In The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, the apex 9 court was of the view that because of a mistaken entry the claim for deduction which was available in law could not be refused to an assessee.

10. In Bharat Earth Movers Vs. Commissioner of Income Tax, Karnataka, the apex court was of the 10 view that leave encashment liability was a liability in praesenti although the same might have been discharged at a later date. Hence, such liability could not be termed as contingent liability and the assessee was entitled to get appropriate deduction by making a debit entry in their profit and loss account for the said amount and by making a corresponding credit entry in the liability account.

11. We are in full agreement with the Commissioner that the decisions of 11 the apex court in the case of Bharat Earth Movers Vs. Commissioner of Income Tax, Karnataka, as well as The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, were squarely applicable in the instant case. We are, however, unable to appreciate the view of the learned judge that it would amount to a double benefit to the assessee.

12. The only question that remains to be decided is whether the assessee- 12 appellant was entitled to the benefit of the aforesaid two decisions for the particular assessment year where assessment had been completed prior to delivery of the judgment in case of Bharat Earth Movers Vs. Commissioner of Income Tax, Karnataka, . Mr. Lahiri placed reliance on the apex court decision in the case of Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others, . Mr. Lahiri put emphasis on the

observation of the apex court (page 2028) "when the court decides that interpretation of a particular provision as given earlier was not legal, it in effect declares that the law as it stood from the beginning was as per its decision, and that it was never the law otherwise".

13. We have not only perused paragraph 9 relied upon by Mr. Lahiri but 13 also the entire decision as a whole. The subject-matter before the court in the said case relates to appointment in University where the issue of reservation cropped up. The issue was taken to the High Court. One Division Bench decided the issue in a manner prescribed therein. The University acted on that basis and gave appointments accordingly. The issue again came up before another Division Bench which held otherwise and referred the issue to a larger Bench. The Full Bench of the High Court upheld the view of the second Division Bench and thereby negated the decision of the first Division Bench. The apex court accepted the view of the Full Bench. The question then arose whether such appointments could be termed as illegal or not. In that context the apex court made the observation quoted supra. In the instant case the assessee-appellant filed its return as per the accounting procedure prevalent on that day. The decision was given by the Assessing Officer on that return in accordance with law as prevalent on that date. It might be true that by coincidence the application for revision was made within the statutory period of limitation after the decision of Bharat Earth Movers Vs. Commissioner of Income Tax, Karnataka, . We are of the view that such decision could have been made applicable in the instant case had there been a dispute pending with regard to the assessment as on the date of delivery of the judgment meaning thereby in case such revisional application was pending as on the date of delivery of the apex court decision the same could have been made applicable.

14. The Commissioner rightly decided the issue and we do not find any scope for interference therein. We, however, are unable to appreciate the stand taken by the learned single judge. The court is only to decide the issue which is brought before it. The subject-matter of the writ petition was a particular assessment year. Hence, there was no scope for the learned single judge to direct the Revenue to reopen subsequent assessments in respect of other assessment years.

15. The appeal succeeds in part. The order of the learned single judge to the extent where it directed reopening of the assessment for other assessment years, is quashed and set aside. The other part of the decision where the learned judge dismissed the writ petition, is affirmed for the reasons given above.

16. The appeal is disposed of accordingly without any order as to costs.

17. Urgent xerox certified copy of this order be made available to the parties, if applied for upon compliance of all requisite formalities.