

(1990) 05 CAL CK 0030

Calcutta High Court

Case No: IT Ref. No. 175 of 1986

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

BIRLA COTTON SPG. and WVG.
MILLS LTD.

RESPONDENT

Date of Decision: May 15, 1990

Citation: (1992) 104 CTR 406 : (1993) 69 TAXMAN 609

Hon'ble Judges: Suhas Chandra Sen, J; Bhagabati Prasad Banerjee, J

Bench: Full Bench

Judgement

@JUDGMENTTAG-ORDER

BHAGABATI PRASAD BANERJEE, J. :

The following questions of law have been referred to this Court by the Tribunal under s. 256(1) of the IT Act, 1961 :

"(1) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that the commission and brokerage amounting to Rs. 31,96,660 should not be considered for the purpose of computation of disallowance under s. 37(3A) of the IT Act, 1961 ?

(2) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that for the purpose of disallowance under s. 40A(5) of the IT Act, 1961, the amount of gratuity should not be considered ?

(3) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that the amount of Rs. 3,26,227 claimed to have been paid as incentive to the employees as per agreement between the employees of the assessee should be allowed, even though it exceeded the statutory limit prescribed under the Payment of Bonus Act and the agreement was concluded after the close of the accounting year ?"

2. The assessment year involved in this reference is the asst. yr. 1980-81, for which the relevant period of account is the financial year ending on 31st March, 1980.

3. The first question is now concluded by the judgment of this Court in the case of CIT vs. Hindustan Motors Ltd., IT Ref. No. 134 of 1985, wherein the judgment was delivered on 23rd February, 1990 [since reported in [Commissioner of Income Tax Vs. Hindusthan Motors Ltd.](#)]. Following the above decision, the question No. 1 is to be answered in the affirmative and in favour of the assessee.

4. The second question is answered by saying that two separate limits would be applicable in the case of the two employees who retired during the relevant previous year, viz., (i) when they were in employment and (ii) after they retired. This aspect is covered by the principles laid down in the case of [Hindustan Motors Ltd. Vs. Commissioner of Income Tax](#) . Further, in calculating the salary and perquisites for the purpose of s. 40A(5) the amount of gratuity exempt under s. 10(10) of the IT Act, 1961 should be excluded on the principles laid down by this Court in the case of [Indian Oxygen Ltd. Vs. Commissioner of Income Tax](#) . Hence, this question is to be answered in the affirmative and in favour of the assessee.

5. Question No. 3 is also now concluded by the decision of this Court in the case of CIT vs. Show Wallace Gillotine Ltd., IT Ref. No. 35 of 1983, wherein the judgment was delivered on 22nd August, 1983.

Following the aforesaid decision, this question is also to be answered in the affirmative and in favour of the assessee.

6. Accordingly, all the three questions of law are answered in the affirmative and in favour of the assessee.

There will be no order as to costs.

SUHAS CHANDRA SEN, J. :

I agree.