

(1988) 03 CAL CK 0042

Calcutta High Court

Case No: Income-tax Reference No. 137 of 1983

COMMISSIONER OF Income Tax

APPELLANT

Vs

RALLIS INDIA LTD.

RESPONDENT

Date of Decision: March 19, 1988**Citation:** (1988) 72 CTR 215 : (1988) 174 ITR 550**Hon'ble Judges:** K. M. Yusuf, J; Ajit K. Sengupta, J; Ajit K. Sen Gupta, J**Bench:** Full Bench

Judgement

AJIT K. SENGUPTA J. - At the instance of the Commissioner of Income Tax, West Bengal IV, Calcutta, the following question of law for the assessment year 1976-77, has been referred to this court u/s 256(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that deduction u/s 80J of the Income Tax Act, 1961, should not be computed proportionately with reference to the number of days of operation during the relevant accounting year ?"

The Income Tax Officer disallowed the claim of the assessee for relief u/s 80J(3) in respect of the New Sumithion Unit since there was operation only for three days in the accounting year and the unit showed a loss of Rs. 13,86,807 and unabsorbed development rebate of Rs. 3,26,128. The Income Tax Officer restricted the amount to Rs. 4,368 proportionate to the number of days the unit operated during the accounting year.

On appeal by the assessee, the Commissioner of Income Tax (Appeals), after considering the facts of the case, followed the decision of the Madras High Court in the case of [Commissioner of Income Tax, Tamil Nadu-I Vs. Simpson and Company](#), and directed the Income Tax Officer to compute the deduction at 6% of the capital and not to restrict the same with reference to the number of days the unit operated. The matter was brought before the Appellate Tribunal by the Revenue challenging the direction of the Commissioner of Income Tax (Appeals). The Appellate Tribunal

noted that it was not disputed that the decision in the case of [Commissioner of Income Tax, Tamil Nadu-I Vs. Simpson and Company](#), was applicable. It also noted that the Appellate Tribunal, A Bench, Calcutta, in the case of the same assessee has held likewise for the assessment year 1975-76. The appeal by the Revenue was dismissed.

On those facts, the question quoted above has been referred to this court.

This question is now concluded by several decisions of different High Courts. Following the decision of this court in the case of [Commissioner of Income Tax Vs. Oyster Packagers \(P.\) Ltd.](#), we answer the question referred to this court in this reference in the affirmative and in favour of the assessee.

There will be no order as to costs.

Filing of paper book is dispensed with.

K. M. YUSUF J. - I agree.