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**(2001) 05 CAL CK 0040**

**Calcutta High Court**

**Case No:** IT Reference No. 83 of 1995 9 May 2001

Commissioner of Income Tax

APPELLANT

Vs

Chloride Industries Ltd.

RESPONDENT

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**Date of Decision:** May 9, 2001

**Acts Referred:**

- Income Tax Act, 1961 - Section 40A(5)
- Income Tax Rules, 1962 - Rule 2B

**Citation:** (2001) 117 TAXMAN 602

**Hon'ble Judges:** Y.R. Meena, J; Meena, J; Arunabha Barua, J

**Bench:** Full Bench

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### **Judgement**

Meena, J.

On an application u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Tribunal has referred the following question for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the entire travel concession or assistance received by the employee has to be excluded from the purview of section 40A(5) of the Act, read with section 10(5) and rule 2B of the Income Tax Rules ?"

2. The assessee-company has filed the return on 27-6-1990, disclosing net profit of Rs. 5,89,45,220 during the course of assessment. The assessing officer noticed that the company has paid travelling allowances in contravention of rule 2B of the Income Tax Rules, 1962. Therefore, the amount of Rs. 8,873 has been disallowed in the hands of the employee. The assessing officer has taken the view, when the amount of Rs. 8,873 is not exempted u/s 10(5) of the Act, this amount should not be excluded for disallowance u/s 40A(5) of the Act in the hands of the assessee-company also. In appeal before the Commissioner (Appeals), the Commissioner (Appeals) has also confirmed the view taken by the assessing officer.

In appeal before the Tribunal, the Tribunal has considered the provisions of section 40A(5) and rule 2B and also the provisions of section 10(5). The Tribunal has taken the view that the entire travel concession or assistance has to be excluded from the purview of section 40A(5).

Heard the learned counsels for the parties. The learned counsel for the revenue submits that the provisions of section 40A(5) especially the second proviso which provides that in computing the expenditure referred to in sub-clause (i) or the expenditure or allowance referred to in sub-clause (ii) of this clause of the aggregate referred to in the foregoing proviso, the following shall not be taken into account, namely, the value of any travel concession or assistance referred to in clause (5) of section 10. He further submits that clause (5) of section 10 provides the exemption in respect of the travel concession or assistance received by the individual from his employer, which provides that the exemption shall be subject to such conditions as may be prescribed. Rule 2B provides the limit on the leave travel concession for exemption u/s 10 clause (5).

3. If the payment or leave travel concession or travelling assistance has been given more than the limit, then amount exceeding limit exempted u/s 10(5) is taxable. In other words, if any concession is given more than the limits provided in rule 2B, that is not exempted in clause (5) of section 10 and when that is not exempted in the hands of the individual employee, how that could be excluded for the purpose of disallowance u/s 40A(5).

4. The learned counsel for the assessee, Dr. Pal submits that the section 40A(5) refers to the leave travel concession and not the limit prescribed on that under rule 2B.

5. Second proviso to section 40A(5) reads as under :

"Provided further that in computing the expenditure referred to in sub-clause (i) or the expenditure or allowance referred to in sub-clause (ii) of this clause or the aggregate referred to in the foregoing proviso, the following shall not be taken into account, namely:

(i) the value of any travel concession or assistance referred to in clause (5) of section 10;"

6. This proviso refers to the travel concession referred to in clause (5) of section 10. The relevant part of clause (5) of section 10 reads as under :

"(5) in the case of an individual, the value of any travel concession or assistance received by, or due to, him,

(a) from his employer for himself and his family, in connection with his proceeding on leave to any place of India;

(b) from his employer or former employer for himself and his family, in connection with his proceeding to any place in India after retirement from service or after the termination of his service, subject to such conditions as may be prescribed (including conditions as to number of journeys and the amount which shall be exempt per head) having regard to the travel concession or assistance granted to the employees of the Central Government:" (Emphasis here italicised in print supplied)

7. When clause (5) of section 10 itself provides that the exemption of leave travel concession shall be subject to the rules framed by the government, how it can be accepted that whatever the amount which is exceeding the limits prescribed in the rule 2B can be ignored in the case of employer. If we accept what Dr. Pal submits, that will run contrary to the object and scheme of the Act.

8. The limit under the rules has been made with the object that the company should not incur limitless expenses for non-business purpose, to reduce the profits which affects the tax liability or puts the government in loss of revenue. The purpose in both the cases is to control such expenses which are not for the purpose of business. In view of that and especially when clause (5) of section 10 itself provides that the exemption shall be subject to limit prescribed in rules, limit prescribed in the rules cannot be ignored for the purpose of disallowance u/s 40A(5) as purpose and object of limit is same in the case of employee and employer both.

9. In the result, we answer the question in negative, that is, in favour of the revenue and against the assessee.