

(1988) 07 CAL CK 0050

Calcutta High Court

Case No: IT Reference No. 137 of 1983

Commissioner of Income Tax

APPELLANT

Vs

Rallies India Ltd.

RESPONDENT

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**Date of Decision:** July 19, 1988**Acts Referred:**

- Income Tax Act, 1961 - Section 256(1), 80J, 80J(3)

**Citation:** (1988) 41 TAXMAN 156**Hon'ble Judges:** K.M. Yusuf, J; Ajit K. Sengupta, J**Bench:** Division Bench**Advocate:** Sunil Mukherji, for the Appellant; K.P. Banerji, for the Respondent

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**Judgement**

Ajit K. Sengupta, J.

At the instance of the Commissioner, 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 ("the Act"):

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 ITO disallowed the claim of the assessee for the relief u/s 80J(3) of the Act in respect of the new sumithion unit since that was in operation only for 3 days in the accounting year and that the unit showed a loss of Rs. 13,86,807 and unabsorbed development rebate of Rs. 3,26,128. The ITO restricted the amount to Rs. 4,368 proportionate to the number of days operated by the unit during the accounting year.

2. On appeal by the assessee, the Commissioner (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 ITO to compute the deduction at 6 per cent of the capital calculated and not to restrict the same with reference to the number of days the unit operated. The matter was brought before the Tribunal by the revenue challenging the direction of the Commissioner (Appeals). The Tribunal noted that it was not disputed that the decision in the case of Simpson & Co. (supra) was applicable. It also noted that the Tribunal, Calcutta Bench "A" in the case of the same assessee has held likewise for the assessment year 1975-76. The appeal by the revenue was dismissed.

3. On those facts the question quoted before has been referred to this Court.

4. 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.

K.M. Yusuf, J.

I agree.