

(2001) 05 DEL CK 0134

Delhi High Court

Case No: Income Tax Reference No. 40 of 1989 14 May 2001

Commissioner of Income Tax

APPELLANT

Vs

ORISSA CEMENT LTD.

RESPONDENT

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**Date of Decision:** May 14, 2001**Citation:** (2001) 250 ITR 846**Hon'ble Judges:** Arijit Pasayat, C.J; D.K. Jain, J; D. K. Jain, J**Bench:** Full Bench**Advocate:** R. D. Jolly, for the Revenue None appeared, for the assessee, for the Appellant;

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### Judgement

Arijit Pasayat, C. J.

Heard. At the instance of the revenue, the following question has been referred for the opinion of this court u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), by the Income Tax Appellate Tribunal, Delhi Bench "B" (hereinafter referred to as "the Tribunal").

"Whether, the Income Tax Appellate Tribunal was correct in law and on facts in holding that payment of sitting fee to directors could not be considered in computing disallowance u/s 40(c) of the Income Tax Act, 1961 ?"

The dispute relates to the assessment year 1978-79.

A brief reference to the factual aspect would suffice. The assessed, a public limited company, filed its return of income under the Act. During the assessment year, the assessing officer noticed that certain payments had been made to the directors as sitting fees. He was of the view that the payment attracted section 40(c) of the Act, and made additions, accordingly. The assessed preferred appeal before the Commissioner (Appeals). The said authority upheld the addition. The matter was carried in appeal before the Tribunal. The stand of the assessed was that section 40(c) refers to remuneration and payment made as sitting fee for attending the Board of Directors' meeting and it cannot be termed to be remuneration. The

Tribunal accepted the stand and directed deletion. The Tribunal found that section 40(c) has no application as it was applicable to payment of remuneration and amenities to the directors. Sitting fees, according to the Tribunal, cannot be said to belong to the aforesaid category and it was in the nature of daily allowance. On being moved, as stated above, the question has been referred for the opinion of this court.

According to learned counsel for the revenue, true concepts of section 40(c) have not been appreciated by the Tribunal. There is no appearance on behalf of the assessed, when the matter was called. It is to be noted that there is no dispute to the aspect that payments were made to the directors for the services rendered by them. Section 30(2) of the Companies Act deals with the aspect of remuneration to directors. It is provided that director may receive remuneration by way of fee for each meeting of the Board attended by him. Remuneration is a return for the services rendered. It is reward to a person or payment for the services rendered. It was observed by the Gujarat High Court in [Alembic Glass Industries Ltd. Vs. Commissioner of Income Tax](#), that remuneration includes money paid to a person for his services or work. In *The Queen v. Postmaster General* (1876) 1 QBD 658, it was held that remuneration is a wider term and means a quid pro quo. If a man gives his services, whatever consideration he gets for giving his services seems to me a remuneration for them. Remuneration, in our opinion, would include all that is quantifiable in money and paid to a person for his services or work. A similar view has been expressed by the Madras High Court in [Rane \(Madras\) Ltd. Vs. Commissioner of Income Tax](#), .

There is no dispute about the fact that the fees which were paid as directors' fees or Board Meetings fees were in respect of the services rendered by the directors in their capacity as directors. It is, Therefore, clear to us that such fees would fall within the meaning of the word "remuneration" u/s 40(c)(i) of the said Act and the Tribunal was, Therefore, right in holding that the directors fees and the Board Meetings fees paid to the directors by the assessed-company were to be included as was done by the Income Tax Officer.

In view of the aforesaid position, the sitting fees paid was clearly covered by section 40(c) of the Act. The question is answered in the negative, in favor of the revenue and against the assessed.