

**(2000) 12 DEL CK 0094**

**Delhi High Court**

**Case No:** Income Tax R. No's. 223 and 224 of 1980

Commissioner of Income Tax

APPELLANT

Vs

Oriental Fire and General  
Insurance Co. Ltd.

RESPONDENT

**Date of Decision:** Dec. 6, 2000

**Acts Referred:**

- Income Tax Act, 1961 - Section 256(1)

**Citation:** (2001) 250 ITR 171 : (2001) 117 TAXMAN 732

**Hon'ble Judges:** Dr. Arijit Pasayat, C.J.; D.K. Jain, J

**Bench:** Division Bench

**Advocate:** R.D. Jolly, Prem Lata Bansal and Ajay Jha, for the Appellant; Satyen Sethi, for the Respondent

### **Judgement**

Arijit Pasayat, C.J.

These two reference applications involve identical issues and are, Therefore, disposed of by this common judgment.

2. On being moved by the Revenue, the Income Tax Appellate Tribunal, Delhi Bench-C (in short "the Tribunal"), has referred u/s 256(1) of the Income Tax Act, 1961 (in short "the Act"), the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the surtax assessments made on the Oriental Fire and General Insurance Co. Ltd. in respect of the income for the assessment years 1972-73 and 1973-74 as successor of Bharat General Re-insurance Ltd., were bad in law ?"

3. The factual position in a nutshell is as follows :

The assessed is the successor of Bharat General Re-insurance Limited, New Delhi. The Central Government framed a scheme for merger of certain Indian insurance

companies in the assessee-company for more efficient carrying on of the general insurance business. Under the scheme, Bharat General Re-insurance Limited was merged in the assessed on the appointed date which was prescribed in the scheme as January 1, 1974. By paragraph 9 of the said scheme it was provided that the merged company shall, on the specified date, stand dissolved without winding up. In view of this Bharat General Re-insurance Limited stood dissolved with effect from January 1, 1974. The Income Tax Officer (in short "the ITO") completed the assessment on the assessed in its capacity as successor of Bharat General Re-insurance Limited under the Companies (Profits) Surtax Act, 1964 ("the Surtax Act" in short), on the basis of Income Tax assessments for the two assessment years 1972-73 and 1973-74. The assessed preferred an appeal before the Appellate Assistant Commissioner (in short "the AAC") who, following the order in the Income Tax assessment, cancelled the surtax assessments. The matter was carried in appeal before the Tribunal by the Revenue. It was noticed by the Tribunal that the Income Tax assessments for the assessment year 1972-73 was cancelled by its order dated December 18, 1976, in I. T. A. No. 2049 of 1975-76 and assessment for the assessment year 1973-74 was cancelled in I. T. A. No. 4578 of 1975-76 by order dated April 7, 1976. In view of these orders, the action of the Appellate Assistant Commissioner in cancelling the assessments under the Surtax Act was upheld. As indicated above, on being moved for reference, the question as set out above has been referred for our opinion.

4. It has to be noted that in respect of Income Tax proceedings, the matter was before this court in the references for the concerned assessment years. By our decision in ORIENTAL FIRE and GENERAL INSURANCE CO. LTD. Vs. COMMISSIONER OF INCOME TAX (AND VICE VERSA), the Tribunal's view was upheld. In that view of the matter, our answer to the question referred is in the affirmative, in favor of the assessed and against the Revenue.

5. The references stand disposed of accordingly.