

(1993) 03 BOM CK 0086

**Bombay High Court****Case No:** Income-tax Reference No. 344 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Greaves Foseco Ltd.

RESPONDENT

---

**Date of Decision:** March 10, 1993**Acts Referred:**

- Income Tax Act, 1961 - Section 28

**Citation:** (1994) 205 ITR 424**Hon'ble Judges:** U.T. Shah, J; B.P. Saraf, J**Bench:** Division Bench**Advocate:** Deokinandan, K.M.L. Majele, for the Appellant;

---

**Judgement**

U.T. Shah J.

1. u/s 256(1) of the Income Tax Act, 1961, read with section 18 of the Companies (Profits) Surtax Act, 1964, the Income Tax Appellant Tribunal has referred the following question at the instance of the Revenue for the opinion of this court :

"Whether, on the facts and in the circumstances of the case and having to the decisions of the Bombay High Court in the case of [Commissioner of Income Tax, Bombay City-II Vs. Marrior \(India\) Ltd.](#), and [Shree Ram Milis Ltd. Vs. Commissioner of Income Tax, Bombay City-I](#), the Tribunal was correct in law in holding that there was no apparent mistake which could be rectified u/s 13(1) 14(1) of the Companies (Profits) Surtax Act, in the assessments for the assessment years 1968-69, 1970-71 and 1971-72 ?"

2. In the assessment originally framed the Income Tax Officer had computed the capital as per provisions of the Second Schedule to the Surtax Act by taking the figures of "general reserves" as on the first day of the relevant accounting year. Thereafter, he initiated proceeding u/s 13(1) 14(1) of the Surtax Act with a view to reduce the general reserve" by the proposed dividend. It appears from the records

that the Income Tax officer has not stated any basis for taking action u/s 13(1) 14(1) of the Act. Before the Tribunal it was submitted on behalf of the assessee with the help of certain decision of his court in [Commissioner of Income Tax, Bombay City-II Vs. Marrior \(India\) Ltd.](#), and [Shree Ram Milis Ltd. Vs. Commissioner of Income Tax, Bombay City-I](#), that the Income Tax Officer could not have taken action u/s 13(1) 14(1) of the Surtax Act, as there was no mistake apparent from the record or, in any event, the mistake was such which could not be resolved without long-drawn process of arguments and debate. It was, therefore, urged that the orders passed by the Income Tax Officer u/s 13(1) 14(1) of the Surtax Act should be cancelled. The Tribunal accepted the stand taken by the assessee and cancelled the orders passed by the Income Tax Officer u/s 13(1) 14(1) of the Surtax Act.

3. At the outset, learned counsel for the assessee submitted that, in view of the decision of the supreme Court in the case of [T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay](#), no fault could be found in the action of the Tribunal in cancelling the order passed by the Income Tax Officer u/s 13(1) 14(1) of the Surtax Act. In any event, the submitted that, in view of the aforesaid decision of this court, the orders passed by the Income Tax Officer under those sections were clearly bad in law. In this view of the matter, he submitted that no infirmity could be found in the order of the Tribunal under reference. Faced with this position, learned counsel for the Revenue strongly supported the action of the Income Tax Officer and justified the passing of the order u/s 13(1) 14(1) of the Surtax Act.

4. On due consideration of the submission of the parties and in view of the aforesaid decision of the supreme Court, this reference has to be answered in favour of the assessee and against the Revenue. We, therefore answer the question accordingly.

5. No order as to costs.