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(2004) 02 DEL CK 0088

In the Delhi High Court

Case No : IT Reference No''s. 363 and 379 of 1984 26 February 2004

Commissioner of Income Tax APPELLANT

Vs

Bahami Prints (P.) Ltd. RESPONDENT

Date of Decision : 26-02-2004

Acts Referred:

Citation : (2005) 142 TAXMAN 348

Hon'ble Judges : B.C. Patel, C.J;Badar Durrez Ahmed, J

Bench : Full Bench

Advocate : Prem Lata Bansal, for the RevenueS.K. Khaitan for the assessed, for the Appellant;

Judgement

B.C. Patel, CJ.

These two references are at the instance of the revenue. The question raised being common in both the cases, the references are being disposed of by this common judgment and/or order. In IT Reference No. 379 of 1984, the question framed is as under:-

"Whether on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the provisions of section 40(c) and not section 40A(5) are applicable to the director employees and on that ground deleting the disallowance of perquisites provided by the assessed company to its directors in excess of the limits permitted in section 40A)?"

2. IT Reference No. 363 of 1984 also raises the same question. We are not required to deal with these matters in detail since the issue is covered by the decision of the Supreme Court in the case of Commissioner of Income Tax, Bombay Vs. M/s. Indian Engineering and Commercial Corporation Pvt. Ltd., , wherein the Supreme Court, while dismissing the department''s appeal, held as under:-

''The employees concerned herein also happen to be directors. The provision in clause (c) of section 40 applies to directors among others. Of course, section 40(c) is applicable only to companies whereas section 40A(5) is applicable to employees whether of companies or others. In the case of directors who are also employees, both the provisions will be attracted - the higher of the two ceilings has to be applied." (p. 728)

3. In the instant case, the higher ceiling is u/s 40(c) and the same has been applied by the Tribunal.

4. Accordingly, the references are disposed in favor of the assessed and against the revenue.

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