(1991) 06 OHC CK 0031

In the Orissa High Court

Case No : Special Jurisdiction Case No. 3 of 1983

Commissioner of Income Tax	APPELLANT
Vs	
B.P.R. Construction	RESPONDENT

Date of Decision : 17-06-1991

Acts Referred:

Citation : (1991) 191 ITR 492

Hon'ble Judges : B.L. Hansaria, C.J;D.M. Patnaik, J

Bench : Division Bench

Advocate : A.K. Ray, for the Appellant; B.K. Mahanti, P.K. Misra and J.P. Patnaik, for the Respondent

Judgement

B.L. Hansaria, C.J.—The following question of law has been referred for answer to this court by the Income Tax Appellate Tribunal, Cuttack Bench:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the interest of Rs. 1,99,109 awarded by the arbitrator is not exigible to tax being in the nature of ex gratia payment but forming an integral part of the award money of Rs. 4,31,107 out of which Rs. 2,32,000 is decided to be a revenue receipt and, therefore, exigible to tax and if interest awarded in this case could be ex gratia payment or it follows out of agreement between parties to a contract ?"

What had happened was that the assessee had executed some contract and, subsequently, at the instance of the parties, the dispute arising out of the contract relating to payment was referred to arbitration in which an award of a sum of Rs. 2,32,000 was made along with a sum of Rs. 1,99,109 towards interest. The interest amount as awarded by the arbitrator was regarded as income of the assessee by the Income Tax Officer but, on appeal, the Commissioner of Income Tax (Appeals) deleted the same. On further appeal being preferred, the learned Tribunal also took the same stand. The Department, therefore, prayed for reference to this court and the aforesaid question of law was referred.

2. It has been held by this court in Govinda Choudhury and Sons Vs. Commissioner of Income Tax, , that the award by an arbitrator relating to interest is in the nature of ex gratia payment and, therefore, cannot be treated as income exigible to tax. We take the same view in the present case and hold that, in view of the law prevailing at the relevant time, payment of interest could not have been taken as income and, therefore, answer the question referred to us in favour of the assessee and against the Department.

3. The question referred to us is answered in the affirmative.

D. M. Patnaik, J.

4. I agree.