(1992) 08 AHC CK 0004

In the Allahabad High Court

Case No : IT Ref. No. 117 of 1980

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

CAWNPORE TEXTILES LTD. — RESPONDENT

Date of Decision : 31-08-1992

Acts Referred:

Citation : (1992) 108 CTR 53

Judgement

BY THE COURT

At the instances of Revenue, the Appellate Tribunal has referred the following question, for the opinion of this Court :

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is correct in holding that extra shift allowanced should be regulated with reference to the number of days the concern worked as whole and not the number of days each machinery worked ?"

2. The Tribunal relying on the order of the Allahabad Bench B of the Appellate Tribunal in the case of J. K. Cotton Spinnining and Weaving Mills Co. Ltd. (I.T.A. No. 1539/Alld/1972-73) dt. 12th June, 1975, held that it was the number of days the concern worked as a whole which is to be taken into consideration for extra shift allowance and not the number of days each machinery has worked. To reinforce its view the Tribunal also adverted to Appendix "I 5 and a Circular of the CBDT issued in this behalf and then concluded that the assessees claim is allowable for the extra shift allowance with regard to the number of days the concern has worked as a whole.

3. A reference against the Tribunals order in J. K. Cotton Spinning & Weaving Mills Co. Ltd. (supra) came up to this Court, which was decided by order dt. 5th October, 1990, reported as CIT vs. J. K. Cotton Spinning & Weaving Mills Co. Ltd. 1990 UPTC 1248 , in which this Court relying on Full Bench decision in Dhampur Sugar Mills Ltd. Vs. Commissioner of Income Tax, , held that the extra shift allowance has to be calculated on the basis of the number of days the plant or

machinery actually worked and not with regard to the number of days the concern has worked as a whole.

4. Following the aforesaid decisions of this Court and the Full Bench decision, we answer the aforementioned question in the negative, that is, in favour of the Revenue and against the assessee. No order as to costs.

