(1993) 09 SC CK 0067

In the Supreme Court Of India

Case No : Ca 5850 Of 1983

Commissioner of Income Tax APPELLANT

Vs

Garware Synthetic Bristles RESPONDENT

Date of Decision : 09-09-1993

Acts Referred:
Income Tax Act, 1961 — Section 37, 40A(7)

Citation : (1994) 117 CTR 260 : (1994) 205 ITR 426

Hon'ble Judges : S. P. Bharucha, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

B.P. Jeevan Reddy, J.—This appeal is preferred by the Revenue against an order of the High Court of Bombay rejecting an application u/s 256(2) of the income tax Act, 1961. By the said application, the Revenue asked the court to direct the Tribunal to state the following two questions for the opinion of the High Court :

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that, in computing the assessee's income for the year 1972-73, the provision for gratuity of Rs. 36,831 should be allowed as a deduction ?

(2) Whether, on the facts and in the circumstances of the case, and having regard to the fact that the entire gratuity liability of Rs. 2,51,710 has been allowed as a deduction in the year 1973-74 in accordance with the provisions of Section 40A(7), the Tribunal ought to have held that no deduction by way of provision for gratuity should be allowed for the year 1972-73 ?

2. The assessment year concerned is 1972-73. Sub-section (7) of Section 40A is not applicable to the said assessment year. Sub-section (7) was introduced by the Finance Act, 1975, with retrospective effect from April 1, 1973. In other words, Sub-section (7) applies on and from the assessment year 1973-74.

3. The assessee claimed a deduction of Rs. 36,831 on account of the provision made by it for payment of gratuity to its employees for the accounting year relevant to the assessment year 1972-73. The deduction was allowed u/s 37 of the income tax Act. This was objected to by the Revenue and the aforesaid questions were sought to be raised.

4. We see no error in the order of the High Court refusing to direct the Tribunal to make a reference with respect to the admissibility of the said deduction. The appeal accordingly fails and is dismissed. No costs.