

**(1999) 02 MAD CK 0021**

**In the Madras High Court**

**Case No :** Tax Case No. 1748 of 1986 12th February, 1999

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

ORIENT PHARMA (P.) LTD.

RESPONDENT

**Date of Decision :** 12-02-1999

**Acts Referred:**

Income Tax Act, 1961 — Section 40A(7)(a)

**Citation :** (1999) 156 CTR 83

**Hon'ble Judges :** R. Jayasirinha Babu, J; R. Jayasimha Babu, J; A. Subbulakshmy, J

**Bench :** Full Bench

## Judgement

R. JAYASIMHA BABU, J.

The admitted facts are that the assessee made a provision for Rs. 84,849 during the assessee's financial year which ended on 31st March, 1975,

towards the liability for payment of gratuity to its employees. The amount was not disbursed to the employees towards the gratuity that was

payable during that year. The assessee set up a gratuity fund by trust deed dt. 28th Dec., 1975, after the course of the financial year, and secured

the approval of the CIT for the trust on 25th July, 1977. The Income Tax Officer allowed the deduction that was claimed by the assessee with

regard to the said sum. The CIT on a suo motu revision held that such a deduction was impermissible having regard to s. 40A(7)(a) of the Income

Tax Act, 1961, which had been inserted by the Finance Act, 1975, with effect from 1st April, 1973. The Tribunal while disagreeing with the CIT's

view has restored the order of the Income Tax Officer.

2. Counsel for the Revenue rightly submitted that having regard to the explicit language of s. 40A, sub-cl. (1) and s. 40A(7)(a), the Tribunal was

clearly in error in allowing the deduction claimed by the assessee. Sec. 40A(1) of the Act provides that the provisions of that section shall have

effect notwithstanding anything to the contrary contained in any other provision of the Act, relating to the computation of income under the head

"Profits and gains of business or profession". Sec. 40A(7)(a) of the Act is relevant for the purpose of this case. That provision reads as under :

Subject to the provisions of cl. (b) no deduction shall be allowed in respect of any provision (whether called as such or by any other name) made

by the assessee for the payment of gratuity to his employees on their retirement or on termination of their employment for any reason.

3. It was contended for the assessee that having regard to s. 40A(7)(b)(i) of the Act, the assessee can claim exemption from the rigour of s.

40A(7)(a) of the Act. The provision viz., s. 40A(7)(b)(i) of the Act referred to and relied on by the assessee reads thus :

..... ""any provision made by the assessee for the purpose of payment of a sum by way of any contribution towards an approved gratuity fund, or

for the purpose of payment of any gratuity, that has become payable during the previous year .....

4. The assessment year with which we are concerned is 1976-77, to which the special provision contained in s. 40A(7)(b)(ii) of the Act has no

application and it is, therefore, unnecessary to consider that provision for the purpose of deciding the assessee's entitlement to deduct the provision

made by it in its account for the financial year 1974-75.

5. During the financial year 1974-75 the assessee had not created any approved gratuity fund and the provision made for payment of gratuity was,

therefore, not a provision made for the purpose of payment of that sum as contribution of approved gratuity fund. It was not a sum which had

become payable during the previous year. Admittedly no part of this amount was paid as gratuity during that financial year.

6. Under s. 40A(7)(b)(i) of the Act deduction can be claimed by the assessee only for the amount for which the provision is made in its account for

the purpose of payment by way of contribution towards an approved gratuity fund, or for the provision made in the accounts for the purpose of

payment of gratuity that is payable during the previous year. The requirement of this provision are not satisfied in this case and the CIT had rightly

directed the Income Tax Officer to disallow the deduction that had been claimed.

7. Learned counsel for the Revenue brought to our notice a decision of a Division Bench of Kerala High Court in Premier Cable Company Ltd.

Vs. Govt. of India, , wherein a similar view has been taken with regard to the applicability of s. 40A(7)(b)(i) of the Act.

8. The questions to be answered are, the answer in favour of the Revenue and against the assessee.