

(1987) 08 DEL CK 0017

In the Delhi High Court

Case No : Income-tax Case No. 213 of 1984

Commissioner of Income Tax

APPELLANT

Vs

Orissa Cement Ltd.

RESPONDENT

Date of Decision : 18-08-1987

Acts Referred:

Citation : (1988) 67 CTR 227 : (1988) 67 CTR 101 : (1988) 173 ITR 94

Hon'ble Judges : S. Ranganathan, J;P.K. Bahri, J

Bench : Division Bench

Judgement

1. By this application, the Commissioner of Income Tax seeks reference of as many as nine questions of law. However, questions Nos. 1, 2, 3, 4, 5, 7 and 8 are already covered by an earlier decision of this court in ITC No. 300 of 1983 (Commissioner of Income Tax Vs. Orissa Cement Limited,). For the reasons stated therein, we reject the application in so far as these questions are concerned. This leaves for consideration only questions Nos. 6 and 9.

2. So far as question No. 6 is concerned, we have called for a reference in somewhat similar circumstances in relation to the assessment year 1976-77 in ITC. No. 294 of 1983. We, Therefore, direct the Tribunal to state a case and refer the following question for our decision :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessed was entitled to the deletion the addition of Rs. 3,67,619 out of its interest claim ?"

3. Mr. Bishambar Lal, learned counsel for the assessed, submits that though in this case the Tribunal has followed its earlier order for the year 1976-77 in which a reference has been called for, the earlier decision of the Tribunal would not be applicable to the entire sum of Rs. 3,67,619. He points out that the interest for the year was calculated with reference to advances made to four different parties, out of which only one figures in the order for the earlier year. The contention is that so far as the other advances are concerned, they were for

business purposes. We are, however, compelled to refer the question in the form set out above because in the appellate order, the Tribunal has not discussed the four items of advances separately. We are, however, not expressing any opinion in regard to the allow ability or otherwise of the interest on the advances made to the other parties. Mr. D. K. Jain, learned counsel for the Department, submits that no separate arguments were addressed in this behalf before the Tribunal and that the Tribunal is not entitled to agitate this aspect at this stage. He may urge this objection also before the Tribunal at the time of preparation of the statement of case.

4. Again, so far as question No. 9 is concerned, we are of the opinion that for the reasons set out by us in our order in ITC No. 89 of 1986 (Commissioner of Income Tax Vs. Dalmia Cement (Bharat) Ltd. (No. 2),) and ITC No. 101 of 1986, the Tribunal should be called upon to state a case and refer the following question for our decision :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in allowing the deduction of Rs. 1,48,500 to the assessed in respect of payments made to field organizers after the abolition of the sole selling agency ?"

5. So far as this question is concerned, again Mr. Bishambar Lal, learned counsel for the assessed, submits that the Tribunal has found as a fact that these market supervisors had rendered certain services and were, Therefore, entitled to a part of the remuneration and this is a finding of fact. We have gone through the order of the Tribunal. In one of its sentences, the Tribunal observes that the list furnished of the job done by the market supervisors was really more in the nature of a cosmetic than in the nature of actual services required and rendered. In other words, the finding appears to be that the market supervisors did not render any services at all. It is, no doubt, true that the Tribunal also added that there was some correspondence on record that some services were rendered. The correspondence referred to by the Tribunal is not available on record and having regard to the nature of the findings of the Tribunal, we are of the opinion that a reference should be called for. It is, of course, open to the Tribunal to clarify the position in the statement of case as to the correspondence referred to.

6. The Tribunal will, Therefore, refer the above two questions for the decision of this court. The application is disposed of accordingly. There will be no order as to costs.