**(1988) 01 CAL CK 0018**

**In the Calcutta High Court**

**Case No :** Income-tax Reference No. 428 of 1977

Commissioner of Income Tax APPELLANT

Vs

Ramdutt Ramkissendass RESPONDENT

**Date of Decision :** 25-01-1988

**Acts Referred:**
Income Tax Act, 1961 — Section 36(1), 37(1)

**Citation :** (1988) 172 ITR 142

**Hon'ble Judges :** Dipak Kumar Sen, Acting C.J.;Shyamal Kumar Sen, J

**Bench :** Division Bench

**Advocate :** M.L. Bhattacharjee, for the Appellant;R.L. Saha and Sukumar Bhattacharji, for the Respondent

## Judgement

Dipak Kumar Sen, Actg. C.J.

1. On an application of the Revenue u/s 256(1) of the Income Tax Act, 1961, the following question has been referred by the Tribunal as a question of law arising out of its order for the opinion of this court:

" Whether, on the facts and in the circumstances of the case, the assessee''s claim for deduction of Rs. 76,649 was rightly allowed by the Tribunal ? "

2. It is found as a fact, which is not in dispute, that in the assessment year 1972-73, the relevant accounting year ending on October 8, 1971, the assessee claimed deduction of the said amount of Rs. 76,649 being the provision for gratuity for its employees. The amount of gratuity provided for was calculated on the basis of a valuation made by qualified actuaries. This provision for gratuity was made in view of the West Bengal Employees'' (Payment of Compulsory Gratuity) Act, 1971, promulgated by the State of West Bengal which came into force on June 14, 1971, and for the first time created a special liability.

3. The controversy involved in the question referred appears to be covered by a decision of this court in CIT v. Eastern Spinning Mills Ltd. [1980] 126 ITR 636. Following the said decision, we answer the question in the affirmative and in

favour of the assessee. There will be no order as to costs. Liberty is given in the advocate on record of the assessee to file his vakalatnama by January 30, 1988.

Shyamal Kumar Sen, J.

4. I agree.

 