(1990) 07 BOM CK 0065

In the Bombay High Court

Case No : IT Application No. 57 of 1987

Devidayal Non-Ferrous Industries (P.) Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 25-07-1990

Acts Referred:

Citation : (1991) 54 TAXMAN 87

Hon'ble Judges : T.D. Sugla, J;Sujata Manohar, J

Bench : Division Bench

Advocate : S.E. Dastur, Jahangir Mistri and Niranjan D. Lapashiya, for the Appellant; G.S. Jetly, K.T. Sidhwa and Mrs. Manjula Singh, for the Respondent

Judgement

Sugla, J.—It was contended on behalf of Mr. Jetly, the learned counsel for the revenue, that nine questions raised by the assessee as questions of law are really questions of fact; and that in any event the questions are covered by the Kerala High Court decision in the case of KARIMTHARUVI TEA ESTATES LTD. Vs. COMMISSIONER OF Income Tax, KERALA., and our Court''s judgment in the case of Western Mechanical Industries Pvt. Ltd. Vs. Commissioner of Income Tax, Bombay City-I, . We have been taken through these decisions. In our opinion, the questions raised by the assessee are not really covered by the aforesaid decisions. The questions do arise as referable questions of law. Accordingly we direct the Tribunal to draw a statement of case and refer to this Court the following questions as questions of law :

"1. Whether, on the facts and in the circumstances of the case, the assessee was entitled to a deduction of the sum of Rs. 2,84,445 paid to an approved gratuity fund and not only of Rs. 51,144 as allowed by the Tribunal ?

2. Whether the Tribunal was right in law in holding that the amount of Rs. 2,33,301 was received by the assessee-company from the predecessor company or that the said amount represented ''money provided'' to the assessee to meet the gratuity liability, when in fact no amount was received by the assessee?

3. Whether the Tribunal was right in law holding that even though the actual contribution made by the assessee to the approved gratuity fund was Rs. 2,84,445 the actual liability of the assessee was Rs. 2,84,445 less the amount of Rs. 2,33,301 appearing as ''provision for gratuity'' in the predecessor company''s balance sheet ?"

Rule made absolute accordingly.

Costs to be in the cause.

