

**(1988) 08 GAU CK 0004**

**In the Gauhati High Court**

**Case No : Income-tax Reference No. 13 of 1976**

India Carbon Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

**Date of Decision : 09-08-1988**

**Acts Referred:**

Income Tax Act, 1961 — Section 254(2), 40

**Citation : (1989) 175 ITR 27**

**Hon'ble Judges : A. Raghuvir, C.J.; J.M. Srivastava, J**

**Bench : Division Bench**

**Advocate : J.P. Bhattacharjee, B.P. Saraf, D.K. Hazarika and A.K. Saraf, for the Appellant; None, for the Respondent**

## **Judgement**

1. The facts in the instant case are slightly involved. The reference arises under the Income Tax Act, 1961. The assessee in this case is India Carbon Ltd., Noonmati, Gauhati. The following two questions are referred to this court under Sub-section (1) of Section 256 of the Act :

"(1) Whether, on the facts and in the circumstances of the case, and on a proper construction of Section 40(c) of the Income Tax Act, 1961, as amended by Section 9 of the Finance (No. 2) Act, 1971, the Tribunal was justified in holding that two interpretations are not possible in respect of the amended provisions of Section 40(c) and that no debatable question of law was involved in the interpretation of Section 40(c) of the Income Tax Act, 1961 ?

(2) whether, on the facts and in the circumstances of the case and on a proper construction of the amended provisions of Section 40(c) of the Income Tax Act, 1961, the Tribunal was justified in rectifying the original order relating to the managing director's remuneration u/s 254(2) of the Income Tax Act, 1961, relating to the assessment years 1972-73 and 1973-74?"

2. The assessee claimed deduction of remuneration paid to the managing director in the sum of Rs. 2,07,783 for the assessment year 1970-71. The

Income Tax Officer held that the amount was excessive and allowed Rs. 54,000. The balance of Rs. 1,53,783 was disallowed. For the assessment year 1972-73, the Income Tax Officer allowed Rs. 54,000 and disallowed Rs. 1,66,330. For the year 1973-74, he allowed Rs. 54,000 and disallowed Rs. 1,90,081. On appeal, the order of the Income Tax Officer was confirmed (sz"c). The Appellate Tribunal confirmed the order in appeal and held ; "It is conceded by both parties that the facts and circumstances are the same in the assessment years in question as were in the assessment years when the Tribunal disposed of the appeals. Under such circumstances, we hold that the Appellate Assistant Commissioner was justified in allowing the managing director's remuneration in full as claimed by the assessee."

3. Later, an application u/s 254 of the Act was filed for amendment of the order in which it was stated that Section 40(c) was amended, vide Finance (No. 2) Act, 1971, with effect from April 1, 1972. The Appellate Tribunal noted the amendment and held : "We, therefore, hold that the order of the Tribunal allowing the full remuneration claimed by the assessee is a mistake apparent from the record and it can be rectified" and "Under the circumstances, we are of the opinion that the Appellate Assistant Commissioner was justified in holding that the managing director's remuneration was reasonable and not excessive. He was, therefore, right in allowing the managing director's remuneration in full for the assessment year 1970-71 as claimed by the assessee. However, in view of the amendment to Section 40(c) of the said Act by the Finance (No. 2) Act, 1971, which is effective from April 1, 1972, limiting the maximum allowance of remuneration to Rs. 72,000, we hold that the assessee is entitled to a maximum allowance of Rs. 72,000 in each of the assessment years 1972-73 and 1973-74 instead of Rs. 54,000 as allowed by the Income Tax Officer. We, therefore, direct that the Income Tax Officer will allow the managing director's remuneration at Rs. 72,000 in each of the assessment years 1972-73 and 1973-74 and the balance allowed by the Appellate Assistant Commissioner is restored to the assessments for the assessment years 1972-73 and 1973-74."

4. Learned counsel for the assessee in this case argued that there is a possibility of Section 40(c) being interpreted in the manner in which the assessee seeks to interpret it. It is argued that Section 40(c) would apply only if the Revenue authorities hold that what was paid by the assessee towards the remuneration of the managing director is excessive and unreasonable, If such a finding is not recorded, then the application of Section 40(c) is not called for. The argument is that such a finding is a jurisdictional question. Therefore, the Appellate Tribunal did not err, or even if it did, the error was per incuriam. This interpretation of Section 40(c) preferred to answer the two questions and two cases are cited in T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, and Sidhramappa Andannappa Manvi Vs. Commissioner of Income Tax, Bombay,

5. We are unable to hold that there is the possibility of such an interpretation as

suggested by the assessee. In our understanding, Section 40(c) is not capable of any interpretation except in the manner answered by the Income Tax Appellate Tribunal. Therefore, we answer both the questions in the affirmative, in favour of the Revenue and against the assessee. No costs.