

SUPREME COURT OF INDIA

Commissioner of Income-tax, Bombay

Vs.

Canning Mitra Phoenix Pvt. Ltd.

C.A.No.173 of 1978

(R. S. Pathak and Sabyasachi Mukharji, JJ.)

08.01.1986

ORDER:-

1. This appeal by special leave is directed against the judgment of the Bombay High Court declining to call for a reference from the Income-tax Appellate Tribunal.

2. In assessment proceedings for the assessment year 1972-73 the respondent claimed a deduction on account of provision made by it towards the gratuity payable to its employees, the amount so claimed being Rs. 49,000/- obtained on the basis of an actuarial valuation. The claim having been disallowed by the Income-tax Officer, the respondent appealed to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner allowed the appeal and directed the Income-tax Officer to admit the claim made by the assessee. The Income-tax Officer appealed to the Income-tax Appellate Tribunal but without success. Thereafter the Commissioner of Income-tax applied to the Appellate Tribunal for a reference to the High Court, and the reference application having been dismissed by the Appellate Tribunal, the Commissioner then applied to the High Court for the same relief. The High Court also rejected the reference application.

3. After hearing learned counsel for the parties we are satisfied that the Appellate Tribunal was right in affirming the order of the Appellate Assistant Commissioner which allowed the claim of the assessee to deduction in respect of its liability towards gratuity. The position has been accurately set forth by this Court in *Shree Sajjan Mills Ltd. v. Commr. of Income-tax, M.P.*, (AIR 1986 SC 484) and learned counsel for the Commissioner has been unable to show us that the case is distinguishable. Accordingly we dismiss the appeal with costs.

Appeal dismissed.