

SUPREME COURT OF INDIA

Cit, Gujarat Iii

Vs.

Cadila Chemicals

(S Bharucha, V Khare and N S Hegde JJ.)

23.02.1999

ORDER

1. The questions raised in these three appeals, relating to three different sets of assessment years, are common. They read thus:

(1) Whether the Tribunal is right in law and on facts in deleting the addition under Section 40A(5) of the Income-tax Act, 1961 in respect of premium paid for the purchase of deferred annuity policies in respect of two Managing Directors?

(ii) Whether the appellate Tribunal is right in distinguishing the decision of the Gujarat Steel Tube (P) Ltd. reported in (1994) 115 CTR 82?

2. It is difficult to understand why the Tribunal declined to refer these questions to the High Court. The High Court took the view that they need not be referred because the issue was settled by the decision of the Supreme Court in Commr. of Income-tax v. L.W. Russel .

3. Learned Counsel for the appellant-Revenue submitted that the decision in Russel's case aforementioned concluded the matter in so far as it related to the employee while the present proceedings related to the avail ability of the deduction in so far as the employer was concerned. He also submitted that the Gujarat High Court, in a matter relating to the employer, Gujarat Steel Tubes v. Commr. of Income-tax 210 ITR 358, had taken a view which favoured the Revenue. There was, therefore, a question of law to be considered and the High Court ought to have called upon the Tribunal to refer the questions to it for determination. Learned Counsel for the assessee, fairly, did not dispute that, in any event, questions of law arose which required determination by the High Court.

4. We make it clear that we do not express any view on the questions but, clearly, the questions are questions of law and their consideration by the High Court is requisite.

5. The appeals are allowed. The orders under appeal are set aside. The applications made by the Revenue under Section 256(2) of the Income-tax Act are allowed. The Tribunal is directed to refer the questions to the High Court for consideration, having drawn up the requisite statement of cases. No order as to costs.