

SUPREME COURT OF INDIA

Commissioner of Income Tax

Vs.

Anil K.Hazarika

C.A.No.5861 of 1997

(S.P. Bharucha, D.P. Mohapatra and S.N. Phukan JJ.)

16.11.2000

ORDER

By the Court:

1. The respondent-assessee has been served but has not chosen to put in an appearance.
2. The High Court, by the order under challenge, declined to call for a reference of the questions set out below on the ground that they were questions of fact and covered by the decision of that court in the case of *CIT v. Ram Krishna Banik (1995) 215 ITR 901* .

The questions read thus :

- "1. Whether, on the facts and in the circumstances of the case, the Tribunal has not erred in law in allowing 40 per cent deduction from the incentive bonus granted by the employer when the incentive bonus is assessable under the head 'Salaries' ?
2. Whether, on the proper construction of section 16 of the Income Tax Act, further deduction @ 40 per cent from the incentive bonus is allowable in addition to specific deduction allowable under that section ?"

The decision in the case of *Ram Krishna Banik* (supra) also holds that identical questions are questions of fact.

3. We are of the view that the questions are questions of law and that the High Court should have directed the Tribunal to refer the same to it for its consideration.

Accordingly, the appeal is allowed. The order under challenge is set aside and the Tribunal is directed to refer the questions quoted above to the High Court for its consideration, after drawing up a statement of case.

No order as to costs.