

**SUPREME COURT OF INDIA**

I. - T. Commr., Bareilly

Vs.

Kisan Sehkari Chini Mill Ltd.

C.A.No.545 of 2002

(S. S. M. Quadri and S. N. Variava JJ.)

18.01.2002

**JUDGEMENT**

**Syed Shah Mohammed Quadri, J.**

1. Heard Mr. Altaf Ahmad, the learned Additional Solicitor General appearing for the appellants and Mr. Rakesh Dwivedi, the learned Additional Solicitor General appearing for the respondent.

2. Leave is granted.

3. This appeal is directed against the judgment and order of the High Court of Judicature at Allahabad in ITA No. 155/97 dated October 15, 1999 taking the view that the following question is not a statable question of law. The question reads as follows:

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in holding that the incentive bonus paid by the assessee is allowable under Section 37 if it is not admissible under specific Section 36(1)(ii) of the I.-T. Act, 1961?"

4. We have perused the order of this Court in Civil Appeal No. 2507 of 1998, dated July 24, 1998 as also the order of this Court in Special Leave Petition (C) Nos. 15305-15307 of 1987 dated May 11, 1988. We are of the view that the question for consideration by this Court in Special Leave Petition (C) Nos. 15305-15307 of 1987, dated May 11, 1988 was a different question. The aforementioned question is directly covered by the order of this Court in Civil Appeal No. 3507 of 1998, dated July 24, 1998.

5. In our view the said question is a referable question of law and it arises from the order of the Tribunal so it needs to be referred to the High Court. We, therefore, direct the Tribunal to state the case and refer the above-mentioned question of law to the High Court. The appeal is accordingly allowed. No costs. Order accordingly.