

CALCUTTA HIGH COURT

Commissioner of Income Tax

Vs

Kanan Devan Hills Produce Company Ltd

(Dipak Kumar Sen, J.)

05.07.1978

JUDGEMENT

Dipak Kumar Sen, J.

(1.) THE facts found and/or admitted in these proceedings are shortly as follows: M/s. Kanan Devan Hills Produce Company Ltd., Calcutta, the assessee, has been carrying on business in cultivation, manufacture and sale of tea. In the assessment years 1966-67 and 1967-68, the corresponding previous years being the calendar years ending on 30th November of 1965 and 1966, respectively, the assessee claimed deduction, inter alia, of amounts paid as " overseas allowance ", " managing allowance ", " devaluation allowance " and " transport allowance " to some of its employees, in the computation of its business profits and income. It was contended that these items did not represent any benefit or amenity or perquisite within the meaning of Section 40(c)(iii) of the I.T. Act, 1961, as it stood at the relevant time and were fully deductible.

(2.) THE ITO rejected the claim of the assessee and added back 40% of the amounts claimed. Being aggrieved by the additions the assessee preferred appeals therefrom. The AAC accepted the contentions of the assessee and held that on a proper construction of Section 40(c)(iii) the allowance in question paid directly to the employees in cash did not come within the ambit of the expressions " benefit or amenity or perquisite " as appearing in the said section. The appeals of the assessee were allowed and the additions were deleted. The revenue went up on further appeal to the Income-tax Appellate Tribunal. The Tribunal also accepted the contention of the assessee, upheld the orders of the AAC and dismissed the appeals of the revenue.

(3.) ON an application of the CIT, West Bengal-II, Calcutta, under Section 256(1) of the I.T. Act, 1961, the Tribunal has drawn up a statement of case and has referred the following questions to this court for its opinion as questions of law arising out of its order: Assessment year 1966-67: " Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that 'overseas allowance ' and ' managing allowance ' did not fall within the expressions ' benefit,' amenity' or ' perquisite' within the meaning of Section 40(c)(iii) of the Income-tax Act, 1961, and in directing accordingly the allowance of Rs. 62,700 for the assessment year 1966-67, which had been disallowed by the Income-tax Officer ? " Assessment year 1967-68: " Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that overseas

allowance, managing allowance, devaluation allowance and transport allowance did not fall within the expression, 'benefit', 'amenity' or 'perquisite' within the meaning of Section 40(c)(iii) of the Income-tax Act, 1961, and in directing accordingly the allowance of Rs. 4,13,811 for the assessment year 1967-68, which had been disallowed by the Income-tax Officer ? " To appreciate the controversy in this reference it is necessary to keep in view the relevant sections. Salary paid by a company to its employees are normally allowed in computation of its business income under Section 37 of the I.T. Act, 1961, which reads, inter alia, as follows: "37. (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purposes of the business or profession..... " ;