

\212\$.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp
L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....R

ITEM NO.110 COURT NO. 2 SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.5861/1997 @@
AA

C.I.T., Shillong Appellant (s)

VERSUS

Anil K. Hazarika Respondent (s)
(With office report)

Date : 16/11/2000 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.P. BHARUCHA
HON'BLE MR. JUSTICE D.P. MOHAPATRA
HON'BLE MR. JUSTICE S.N. PHUKAN

For Appellant (s) Mr. K.N. Shukla, Sr.Adv.
Mr. S.W.A. Qadri, Adv.
Ms. Sushma Suri, Adv.

For Respondent (s) Ex-parte

UPON hearing counsel the Court made the following
O R D E R

....L.....I.....T.....T.....T.....T.....T.....T.....J
.SP2

The appeal is allowed. No order as to costs.

.SP1 (N. Annapurna) (Shelly Sengupta)
Court Master Court Master

(Signed order is placed on the file.)

.PA
L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....J

IN THE SUPREME COURT OF INDIA@@
AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA

CIVIL APPELLATE JURISDICTION@@
AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA

CIVIL APPEAL NO. 5861 OF 1997@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCC

C.I.T., Shillong

....Appellant(s)

versus

Anil K. Hazarika

...Respondent(s)

O R D E R@@
CCCCCCCCCC

L.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J
.SP2

The respondent-assessee has been served but has not chosen to put in an appearance.

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 C.I.T. vs. Ram Krishna Banik (215@@
CCCCCC CCCCCCCCCCCCCCCCCC

I.T.R. 901).

The questions read thus:

.SP1

"1. Whether on the facts and in the circumstances of the case, the Tribunal has not erred in law in allowing 40% 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% from the incentive bonus is allowable in addition to specific deduction allowable under that section?"

.SP2

The decision in the case of Rama Krishna Banik also holds that@@
CCCCCCCCCCCCCCCCCCCC
identical questions are questions of fact.

...2/-

.PA

-2-

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.

.SP1

.....J.
(S.P. Bharucha)

.....J.
(D.P. Mohapatra)

.....J.
(S.N. Phukan)

New Delhi,
November 16, 2000.