

Patiala (G. C. Mital, J.)

Krishna Cotton and General Mills v. Commissioner of Income Tax,

(18) In another strain, *Municipal Corporation of Greater Bombay and others v. Thukral Anjali Deokumar and others* (7), was cited, to contend that giving a weightage to a candidate on the basis of being an ex-student of the college, was arbitrary capable of being struck down. This case was pressed into service by learned counsel for the petitioners, on the ground that inherent in the concept of normalisation was grant of weightage evidently resulting from the mathematical calculation given in clause 7. In that case, the Supreme Court struck down college-wise institutional preference holding that it had so far recognised only University-wise institutional preference. But in that case weightage of marks given to a candidate on University-wise institutional preference was not challenged but it was the further weightage of marks of college-wise institutional preference which was challenged and was successfully hit. That case is of no assistance to the decision of the case in hand.

(19) For the foregoing reasons, this petition succeeds. Unhesitatingly, we quash the concept and principle of 'normalisation' being violative of Articles 14 and 15 of the Constitution and direct its deletion from the Admission Brochure for joint admission to the B. Tech Courses at Regional Engineering Colleges and Chhotu Ram State College of Engineering, Murthal, as given for the academic year 1989-90, and further direct the respondents to finalise the admission on the basis of the old procedure which held good until recently in the preceding years. The petitioners shall have their costs, which are quantified at Rs. 5,000.

R.N.R.

Before : G. C. Mital and K. S. Bhalla, JJ.

KRISHNA COTTON AND GENERAL MILLS.—Applicant.

versus

COMMISSIONER OF INCOME TAX, PATIALA,—Respondent.

Income Tax Reference No. 143 of 1979

November 3, 1988.

*Income Tax Act (XLIII of 1961)—S. 10(2)—Private Limited Company receiving rental income from letting out godown—Such Company—Whether an authority constituted under law—Deduction—Whether can be allowed.*

(7) Judgment Today 1989(1) S.C. 468

*Held*, that it is no longer in controversy that benefit under S. 10(2) of the Income Tax Act, 1961 can be taken only by the statutory authorities constituted under any law for the time being in force for marketing of commodities like ware-housing corporations. A Company incorporated under the Companies Act is not an authority constituted under any law and cannot take benefit of concession granted under S. 10(2) of the Act.

(Para 3).

R.A. No. 153 ASR/1978-79 arising out of ITA No. 719 (ASR)/1977-79) Assessment year 1974-75 to refer the following question of law to the Hon'ble High Court of Punjab and Haryana at Chandigarh for its opinion:—

*“Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the assessee is not entitled to claim deduction of Rs. 6,427 under section 10(29) of the Income-tax Act, 1961?”*

S. S. Mahajan, Advocate with Suvir Sehgal, Advocate, for the Applicants.

Ashok Bhan, Sr. Advocate with Ajay Mittal, Advocate, for the Respondents.

#### ORDER

*Gokal Chand Mital, J.*

(1) The Income-tax Appellate Tribunal, Amritsar Bench has referred the following question of law for opinion of this Court :

*“Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the assessee is not entitled to claim deduction of Rs. 6,427 under Section 10(29) of the Income-tax Act, 1961?”*

It arises out of the following facts :

(2) The Krishna Cotton and General Mills Private Limited, Jagraon,—the assessee is a private limited Company incorporated under the Companies Act, 1956. The assessee received rental income in respect of a godown let out to the Food Corporation of India and claimed exemption under Section 10(29) of the Income-tax Act, 1961 which is as follows :

*“10(29) : In the case of an authority constituted under any law for the time being in force for the marketing of*

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commodities, any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities;"

Deduction was not allowed by the Tribunal as letting out of godown was not by an authority constituted under any law for the time being in force for the marketing of commodities and was by a private limited Company. The assessee wanted to take benefit of the decision rendered by the Supreme Court and the High Courts relating to letting out of godowns by warehousing corporations or such like statutory authorities and they were distinguished.

(3) It is no longer in controversy that benefit under Section 10(29) of the Income-tax Act can be taken only by the statutory authorities constituted under any law for the time being in force for marketing of commodities like warehousing corporations and for this purpose reference may be made to *C.I.T., Patiala-II v. Haryana Warehousing Corporation* (1), rendered by this Court and *Shree Sajjan Mills Ltd. v. Commissioner Income Tax M.P.* (2), by Delhi High Court. The benefit of the aforesaid decisions cannot be taken by the assessee. The matter of a private limited Company is covered by the decision rendered in *Singhal Brothers P. Ltd. v. Commissioner Income-tax, West-Bengal-I* (3), (1980) 124 I.T.R. 147 by Calcutta High Court against such a Company and in favour of the Revenue. We have gone through the aforesaid decisions and fully agree that a Company incorporated under the Companies Act is not an authority constituted under any law and cannot take benefit of concession granted under Section 10(29) of the Income-tax Act, 1961. Following the aforesaid view of the Calcutta High Court, the question is answered in affirmative i.e. against the assessee and in favour of the Revenue but with no orders as to costs.

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P.C.G.

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(1) (1978) 112 I.T.R. 374.

(2) (1985) 156 I.T.R. 407.

(3) (1980) 124 I.T.R. 147.