

MGN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.1034 OF 2004

The Commissioner of Income Tax)
Mumbai City-VIII, Aayakar Bhavan)
M.K. Road, New Marine Lines,)
Mumbai-400 020.)..APPELLANT

Vs.

M/s.Pamwi Tissues Limited)
36/37, Mittal Chambers,)
Nariman Point, Mumbai-400 021.)..RESPONDENT

Mr. S.M. Shah with Mr. Sandeep Wasnik and Mr. P.S.
Sahadevan for the Appellant.
Mr. A.K. Jasani, for the Respondent.

**CORAM: F.I. REBELLO &
R.S.MOHITE, JJ.
DATED: 4TH FEBRUARY, 2008**

JUDGMENT (PER F.I. REBELLO, J.):

. The Revenue has preferred the Appeal on the following question:-

"The substantial question of law which arises in the present appeal is regarding the correct interpretation of Section 43-B, 2(24)(X) r/w. Section 36(1)(Va) and as to the claim of deductions as claimed by the assessee in respect of the PF, EPF and ESIC contributions especially in the facts and circumstances of the case and in law."

We are concerned with the Assessment Year 1990-91.

In respect of the very issue this Court in **Income Tax Appeal No.256 of 2007 The Commissioner of Income Tax vs. Godaveri (Mannar) Sahakari Sakhar Karkhana Ltd.**, decided on 8th October, 2007 held that in so far as Provident Fund dues the amendment is made applicable from the assessment year 2004-05. The Section as it stood earlier was that the employees contribution to P.F. if not paid within the due date the employee was not entitled to deduction. Considering the said judgment and the finding the Appeal will have to be allowed.

2. On behalf of the respondents, however, learned Counsel draws our attention to the judgment of the Gauhati High Court in **Commissioner of Income-tax vs. George Williamson (Assam) Ltd. 284 ITR 619 (Gauhati)**. The issue there was contribution of P.F.dues after closing of accounting period, but before due date of filing returns. The Assessment Year was 1992-93. The Gauhati High Court followed its earlier judgments. The High Court in the Appeal preferred by the Revenue was pleased to hold that they are not inclined to review the decision in CIT vs. Bharat Bamboo & Timber Supplies, 219 ITR 212 and **CIT vs. Assam Tribune 253 ITR 93**. The learned Counsel points out that the Revenue had preferred Special Leave Petition in the Supreme Court in **Commissioner of Income Tax-II, Gauhati vs. M/s.Vinay Cement Ltd.** It is pointed out that one of

the Appeals was the subject matter in the Special Leave Petition in the Supreme Court and the Supreme Court was pleased to dismiss the Special Leave Petition.

3. The learned Counsel then draws our attention to the judgment of the Supreme Court in Supreme Court Employees Welfare Association vs. Union of India, 1989 (4) SCC 187 to point out that if the Supreme Court has given reasons for dismissing the Special Leave Petition, that will attract Article 14 of the Constitution. Otherwise a mere dismissal of a Special Leave Petition as held in Indian Oil Corporation vs. State of Bihar 167 ITR 897 (S.C.) which does not indicate the grounds or reasons of dismissal by necessary implication it must be taken that the Supreme Court decided that it was not a fit case for a Special Leave Petition. Based on this it is sought to be submitted that the Supreme Court while dismissing the Special Leave Petition has given reasons and consequently that it would be a binding precedent.

4. In our opinion the dismissal of the Special Leave Petition as held in Commissioner of Income Tax -II Gauhati vs. M/s.Vinay Cement Ltd. (supra) cannot be said to be the law decided. In State of Orissa & Ors. vs. M.D. Illyas, (2006) 1 S.C.C.275 the Supreme Court has held that a decision is a

precedent on its own facts and that for a judgment to be a precedent it must contain the three basic postulates. A finding of material facts, direct and inferential. An inferential finding of fact is the inference which the Judge draws from the direct or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) Judgment based on the individual effect of the above.

. In **Municipal Corporation of Delhi vs. Gurnam Kaur (1999) 1 S.C.C.101** the Supreme Court has set out the tests of finding the principle which is binding.

. Considering those judgments and in the light of the judgment of this Court the Appeal filed by the Revenue will have to be allowed. Consequently the Appeal on the questing of law as filed is allowed.

(R.S.MOHITE, J.)

(F.I.REBELLO, J.)