

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 104/2005

**COMMISSIONER OF INCOME TAX Appellant
Through Mrs. P.L. Bansal, Adv.**

versus

**M/S MOHAN MEAKIN LTD. Respondent
Through Mr.C.S. Aggarwal, Sr. Advocate
with Mr. Prakash Kumar, Adv.**

**CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE DR. JUSTICE S.MURALIDHAR**

**O R D E R
15.11.2007**

- 1. The Revenue is aggrieved by an order dt. 18th Aug., 2004 passed by the Tribunal, Delhi Bench 'B' in ITA No. 437/Del/1990 and ITA No. 251/Del/1990 relevant for the asst. yr. 1985-86.**
- 2. Three issues have been raised by learned counsel for the Revenue.**
- 3. The first issue is with regard to allowing a deduction of Rs. 3,44,558 made on account of a provision for leave encashment to permanent employees of the assessee.**

4. We have gone through the order passed by the Departmental authorities and find that there it has not been mentioned anywhere that the assessee does not have a scheme for leave encashment. On the contrary, the fact that leave encashment is available only to permanent employees suggests that the assessee has a scheme in existence and that too is limited to a class of employees. The Tribunal has relied upon a decision of the Supreme Court in Bharat Earth Movers vs. CIT (2000) 162 CTR (SC) 325 : (2000) 245 ITR 428 (SC) in which the question of law was as follows :

"Whether on the facts and in the circumstances of the case, the provision for meeting the liability of encashment of earned leave by the employees is an admissible deduction ?" The Supreme Court answered the question in the affirmative in view of the existence of a scheme for leave encashment. We are of the view that the decision of the Supreme Court clearly applies to the facts of this case. No substantial question of law has been made out in this regard by the Revenue and the decision of the Tribunal cannot be faulted with.

5. The second question raised by learned counsel for the Revenue is with regard to a deduction of Rs. 1 lakh on supply of know-how. We find that the amount is insignificant and the tax liability is minimal.

We, therefore, decline to frame any substantial question of law in this regard.

6. The third issue raised by learned counsel for the Revenue is with regard to a deduction of Rs. 5,27,500 granted by the Tribunal. An employee of the assessee had embezzled an amount of Rs. 35,27,500 and had subsequently committed suicide. The assessee made efforts to recover the embezzled amount but could succeed in recovering only Rs. 64,000. It was noted that the employee had left behind assets worth approximately Rs. 5 lakhs. On this basis, the Tribunal granted to the assessee the benefit of Rs. 5,27,500 only while it declined to grant any benefit to the assessee in respect of the claim of deduction of Rs. 30 lakhs as being not recoverable. We do not find, on the facts of this issue, that any substantial question of law arises in this regard.

7. The appeal is dismissed.

MADAN B. LOKUR, J

S.MURALIDHAR, J

NOVEMBER 15, 2007

Kapil