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THE HIGH COURT OF DELHI AT NEW DELHI

ITA.Nos.274/2003, 291/2003 & 308/2003

Judgement delivered on: 14.12.2004

COMMISSIONER OF INCOME TAX

...Appellant.

- versus -

IFFCO LTD

...Respondent

Advocates who appeared in this case:

For Appellant : Ms Premilata Bansal with Mr Ajay Jha.
For Respondent : Mr V.U. Iradi.

CORAM:-

**HON'BLE MR JUSTICE B.C. PATEL, CHIEF JUSTICE
HON'BLE MR JUSTICE BADAR DURREZ AHMED**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

CHIEF JUSTICE (ORAL)

1. These three appeals are preferred under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as "the Act") by the Revenue raising a question that the Tribunal was not correct in allowing the deduction on accrual basis



(6)

although Section 43B of the Act specifically refers to actual payment. There is no controversy about the fact that the respondent/assessee is required to remit 1% of the net profit as per section 61 of the Multi State Co-operative Societies Act, 1984 and Multi State Cooperative Societies Rules 1985. Rule 4 of the said Rules refers to contribution towards Cooperative Education Fund and it is in view of this Rule that 1% of the net profit is required to be contributed by the Multi State Cooperative Society. This amount is to be placed with the fund maintained by the National Cooperative Union of India Ltd, New Delhi.

2. According to the assessee, this contribution is not a cess, tax, duty or fee and therefore Section 43B would not be applicable. However, before the Tribunal, the question has not been specifically raised by the revenue or by the assessee. It was submitted that in terms of Section 37, the amount of contribution to the said fund is an allowable deduction. The issue is that if section 43B is applicable then it will be allowed on actual payment basis only. If not, then it may be allowed on accrual basis. The key question is whether the contribution to the said fund is a "tax, duty, cess or fee". This aspect has not



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been examined by the tribunal and, therefore, it would be appropriate to remit the matter to the tribunal to dispose of the same in accordance with law and to return a finding as to whether section 43 B would be applicable or not.

The Appeals are disposed of accordingly.

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CHIEF JUSTICE

sdt-
BADAR DURREZ AHMED, J

December 14, 2004
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**** ITA Nos. 274/2003, 291/2003 & 308/2003.enw **/final**

original order is placed in ITA 274/03