

**Cit vs. M.M.T.C.**

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**SooperKanoon Citation :** [sooperkanoon.com/710331](http://sooperkanoon.com/710331)

**Court :** Delhi

**Decided On :** Sep-24-2001

**Reported in :** [2001]120TAXMAN803(Delhi)

**Appeal No. :** Surtax Reference No. 1 of 1981 24 September 2001

**Appellant :** Cit

**Respondent :** M.M.T.C.

**Advocate for Pet/Ap. :** Sanjeev Khanna and; Ajay Jha,;for the Revenue.; R.S. Mathur

**Judgement :**

ORDER

Heard.

2. For the assessment year 1973-74, the following questions have been referred at the instance of the revenue and the assessed for opinion of this court under section 256(1) of the Income Tax Act, 1961, read with section 18 of the Companies (Profits) Surtax Act, 1964:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that the accounts styled as 'Staff Benefits Reserves', 'Self Insurance Reserves' and 'Provision for doubtful debts', doubtful advance and doubtful claims' were outside the scope of the Explanationn to rule 1 of the Second

Schedule to the Companies (Profits) Surtax Act, 1964 and the amounts standing to the credit thereof constitute reserves within the meaning of the said Schedule ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that 'Provision for gratuity' was within the scope of the Explanation to rule 1 of the Second Schedule to the Companies (Profits) Surtax Act, 1964 and the provision for gratuity was calculated on an actuarial basis and was in respect of a specific liability ?'

First question is at the instance of the revenue and the second question is at the instance of the assessed. So far as the first question is concerned, in view of the fact that similar question was considered by us in IT Reference Nos. 140 and 141 of 1980, we answer the question in the affirmative, in favor of the assessed and against the revenue. So far as the second question, referred at the instance of the assessed, is concerned, following factual aspects as noted by the Tribunal will be relevant:

'As regards the provision for gratuity, the learned counsel for the assessed conceded that the amount was arrived at on the basis of the actuarial calculations and that it covered the amount actually payable during the year. The gratuity fund was approved also by the Commissioner. Since the provision for gratuity was in respect of a specific liability, the same could not be included in the capital for the purposes of surtax. The order of the Appellate Assistant Commissioner in regard to provision for gratuity is accordingly reserved and that of the Income Tax Officer restored.'

3. In view of the aforesaid factual finding, the question is answered in the affirmative, in favor of the revenue and against the assessed.