

**THE HON'BLE SRI JUSTICE V.V.S.RAO**  
**AND**  
**THE HON'BLE SRI JUSTICE R. KANTHA RAO**

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**REFERRED CASE No.5 of 2004**

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**Dated:20.12.2011**

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Between:

Commissioner of Income Tax,  
Andhra Pradesh-I, Hyderabad.

...Applicant

and

Sri P.Sanjeeva Rao,  
Medak.

...Respondent

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**THE HON'BLE SRI JUSTICE V.V.S.RAO**  
**AND**  
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**REFERRED CASE No.5 of 2004**

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**ORDER:** (Per Hon'ble Sri Justice V.V.S.Rao)

The following question is referred to this Court under Section 256(1) of the Income Tax Act, 1961 (the Act), at the instance of the Revenue.

Whether on the facts and in the circumstances of the case the ITAT was correct in law in holding that the disallowance of 40% of the incentive bonus claimed by the assessee as a deduction was a debatable issue till 8.3.1995?

To appreciate the issue, it is necessary to briefly notice the fact of the matter as summarized in the statement of case. The respondent/assessee, who was the Development Officer in the

Life Insurance Corporation of India, filed his returns for the relevant assessment year and claimed deduction of 40% of the incentive bonus received by him. The Assessing Officer while processing the returns under Section 143(1) of the Act levied additional tax. The assessee unsuccessfully filed an appeal before the Commissioner of Income Tax (Appeals). The assessee carried the matter in further appeal before the Tribunal. The Tribunal allowed the appeal and held that *prima facie* adjustment made in respect of the claim of deduction of 40% of incentive bonus for the assessment year under consideration was cancelled and consequently deleted the addition in that regard.

During the course of arguments the attention of this Court is invited to the decision of the Supreme Court in **Kvaverner John Brown Engg. (India) P.Ltd v Assistant Commissioner of Income Tax**<sup>[1]</sup>, wherein it was held as under.

...One of the main conditions stipulated by way of the first proviso to Section 143(1)(a), as it stood during the relevant time, referred to *prima facie* adjustments. The first proviso permitted the Department to make adjustments in the income or loss declared in the return in cases of arithmetical errors or in cases where any loss carried forward or deduction or disallowance which on the basis of information available in such return was *prima facie* admissible but which was not claimed in the return or in cases where any loss carried forward, or deduction or allowance claimed in the return which on the basis of information available in such return was *prima facie inadmissible*. In the present case, therefore, when there were conflicting judgments on interpretation of Section 80-O, in our view, *prima facie* adjustments contemplated under Section 143(1)(a) was not applicable and, therefore, consequently appellant was not liable to pay additional tax under Section 143(1A) of the 1961 Act.

In view of the same, it may be taken as well settled that while assessing the return of income under Section 143(1)(a) of the Act, the Income Tax Officer or any Assessing Officer of the Department is not entitled to make adjustments except in regard to

arithmetical errors or matters which are *prima facie* adjustable.

Following the above, the reference is answered in the affirmative in favour of the assessee and against the Revenue. The Referred Case shall stand disposed of accordingly without any order as to costs.

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(V.V.S.RAO, J)

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(R.KANTHA RAO, J)

20.12.2011

vs

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[\[1\]](#) (2008) 305 ITR 103 (SC)