

THE HON'BLE SRI JUSTICE V.V.S.RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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I.T.T.A.Nos.146 of 2008; 198, 201, 203, 226, 227, 229, 230, 288, 437,
454, 468, 474, 481, 483, 485, 492 and 504 of 2010

Dated:30.11.2010

Between:

The Commissioner of Income Tax,
Vijayawada.

... Appellant

And

M/s.Swarna Wines,
D.No.77-31-13,
Prakashnagar, Payakapuram,
Vijayawada,
And others.

... Respondents

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COMMON JUDGMENT: (per Hon'ble Sri Justice V.V.S.Rao)

In all these cases the assesseees were granted a licence under the Andhra Pradesh Indian Liquor and Foreign Liquor Rules, 1970 and the Andhra Pradesh Excise Act, 1968. The licence enabled the assessee to carry on trade in retail liquor business. The assesseees commenced their respective business by forming a partnership firm with others. Such firms were constituted either before or after obtaining the licence.

In the income tax returns, for the relevant year, the assesseees claimed deduction in respect of the salary and interest paid to the partners. The assessing officer, following the judgment of the Supreme Court in **Biharilal Jaiswal v Commissioner of Income Tax**^[1], disallowed the deduction. The assesseees were, however, successful before the Income Tax Appellate Tribunal. The Revenue has now come forward with these appeals under Section 260A of the Income Tax Act, 1961.

Except in ITTA No.203 of 2010, though the notices are served on the respondents, none appears and nobody entered appearance for them.

The question whether the assessee was entitled to claim deduction of salary, and interest paid to the partners, in the returns was considered by a Division Bench of this Court in **The Commissioner of Income Tax v M/s.Swarna Bar & Restaurant**^[2]. There is no dispute that the conclusion therein squarely covers the *lis* in these cases. Sri Y.Subramanyam, Counsel for the respondent in ITTA No.203 of 2010 also does not dispute the legal position that the matter is covered by our judgment referred to hereinabove. Following the same, these appeals also have to be allowed.

Accordingly the appeals filed by the Revenue are allowed, and the

impugned orders of the Income Tax Appellate Tribunal are set aside. No costs.

(V.V.S.RAO, J)

(RAMESH RANGANATHAN, J)

30.11.2010
vs

[\[1\]](#) (1996) 217 ITR 746

[\[2\]](#) ITTA Nos.613 of 2006 and batch, dated 09.9.2010