(1981) 09 DEL CK 0046

In the Delhi High Court

Case No : IT Reference No''s. 166 to 168 of 1974

Additional Commissioner of Income Tax APPELLANT

Vs

William Land RESPONDENT

Date of Decision : 24-09-1981

Acts Referred:

Income Tax Act, 1961 — Section 10(6)(vii), 10(6)(vii)(a)(ii)

Citation : (1982) 8 TAXMAN 115

Hon'ble Judges : S. Ranganathan, J;Leila Seth, J

Bench : Division Bench

Advocate : G.C. Lalwani and Madan Lokur, for the Appellant; G.C. Sharma, Lalit Bhasin, Vinay Bhasin and Randhir Chawla, for the Respondent

Judgement

Seth, J.—The assessee, an individual, was employed as General Manager by Oberoi Intercontinental Hotel during the relevant years. The assessment years with which we are concerned are 1965-66, 1966-67 and 1967-68, the corresponding previous years ending 31-3-1965, 31-3-1966 and 31-3-1967, respectively. The assessee claimed that his salary was exempt from tax u/s 10(6)(vii)(a)(ii) of the income tax Act, 1961 (hereinafter referred to as "the Act") as he was a foreign technician. The ITO, however, rejected his claim on several grounds. He held that the assessee''s duties pertained to general administration which means supervising all the departments and not the kitchen department exclusively, as such the assessee would be entitled to exemption, if at all, under sub-clause (vii)(a)(ii) only. He further held that as the approval of the Central Government had not been obtained before the commencement of the assessee''s service nor within one year of such commencement, the assessee was not entitled to the exemption. He also observed that the exemption granted by the Ministry of Tourism was for the period 1-12-1964 to 5-10-1968, i.e., a period of more than 36 months which was the permitted prescribed period. In these circumstances, he held that the assessee was not entitled to any exemption under sub-clause (vii)(a)(ii).

2. Being aggrieved, the assessee appealed to the AAC, who allowed the assessee''s appeal to the extent that he held that the assessee was entitled to the exemption under sub-clause (vii)(a)(i). As the AAC was of opinion that the Central Government had approved the assessee''s contract of service within the prescribed time, he held that the assessee''s salary was exempt from that time for the first six months.

3. On further appeal to the Tribunal, the assessee contended that he was entitled to the exemption under sub-clause (vii)(a)(ii). The controversy before the Tribunal was confined to this aspect of the matter. Reliance was placed on the correspondence between the Government on the one hand and the assessee''s employers on the other.

4. A letter dated 25-11-1964 addressed to the employer of the assessee from the Ministry of Home Affairs indicated that the authorities concerned had been authorised to grant a visa to the assessee for one year. Subsequent correspondence between the Directorate General of Tourism and the Oberoi Intercontinental Hotel for approval of the service contract for purposes of tax exemption indicated the nature of the assessee''s duties. The main duties to be performed as specified in the letter dated 9-12-1968 are set out as follows :

Main duties performed Supervision of manufacturing and processing of food, which includes the smoking of meats, manufacture of pastry, bread, etc. He is our chief consultant in the manufacturing operation and chief of general management of the hotel.

In the final paragraph of the abovementioned letter, it was specifically stated that in view of the specialised knowledge and experience of the assessee and the duties performed at the hotel, the assessee was fully qualified to be exempted as "foreign technician" under sub-clause (vii)(a)(ii).

5. On 26-3-1969 the Ministry of Tourism and Civil Aviation informed the assessee''s employers that the Government of India approved the appointment of the assessee as a technician for the period 4-12-1964 to 5-10-1968 for the purpose of exemption from income tax on his salary. The grant of the actual exemption, however, being subject to the fulfillment of the conditions laid down in sub-clause (vii)(a), as amended from time to time. By a corrigendum dated 7-8-1969, the Ministry of Tourism and Civil Aviation specifically corrected the approval granted under sub-clause (vii) by their letter dated 26-3-1969 to sub-clause (vii)(a)(ii).

6. On the basis of this correspondence, the Tribunal was satisfied that the appointment of the assessee had been approved under sub- clause (vii)(a)(ii). It further observed that there was no dispute that the other conditions of sub-clause (vii)(a)(ii) had been satisfied by the assessee. It, therefore, held that the assessee was entitled to the exemption under sub-clause (vii)(a)(ii), i.e., for a period of 36 months.

7. The Commissioner then moved the Tribunal to state a case and refer to us certain questions of law. The Tribunal has referred the following questions for the decision of this Court:

1. Whether, on the facts and in the circumstances of the case, the assessee could be treated as a technician for purpose of Explanation to section 10(6)(vii) ?

2. If the answer to Question No. 1 is in the affirmative, whether, on the facts and in the circumstances of the case, the assessee was entitled to exemption under the provisions of section 10(6)(vii)(a)(ii) of the income tax Act, 1961 for the three years in dispute ?

8. Mr. Lalwani, appearing for the revenue, urges that the approval of the Central Government to the assessee''s contract of service was not obtained within one year of the commencement of his service. He also contends that the assessee was only entitled to the exemption under sub-clause (vii)(a)(i) and not under sub-clause (vii)(a)(ii).

9. We, however, feel that there is not much force in either of his submissions. By a letter dated 25-11-1964, the Ministry of Home Affairs had informed the assessee''s employers that the New York Consulate General of India had been authorized by cable to grant the assessee a visa for one year. On 18-12-1964 the Ministry of Home Affairs clarified that the assessee''s appointment had been approved for three years and his visa be extended. Further the AAC held that the condition that the service contract be approved before commencement or within one year thereafter, had been fulfilled. This aspect was not agitated by the revenue before the Tribunal. As such it would appear to us that it is concluded in favour of the assessee.

10. The other aspect as to whether the assessee is entitled to the exemption under sub-clause (vii)(a)(ii) or sub-clause (vii)(a)(ii) also appears to be quite clear. It is apparent from the correspondence which has been referred to in some detail earlier and in particular the letter dated 26-3-1969 and the corrigendum dated 7-8-1969 issued by the Ministry of Tourism and Civil Aviation, that the exemption has been clearly granted under sub-clause (vii)(a)(ii). The Tribunal has also held that all the other conditions pertaining to section 10(6)(vii)(a)(ii) has been satisfied and this has not been controverted. In the result. Question No. 1 is to be answered in the affirmative and in favour of the assessee. It, therefore, follows that Question No. 2 has also to be answered in the affirmative and in favour of the assessee. As the assessee has succeeded, he will be entitled to its costs. Counsel''s fee Rs. 350 (One set).

