(1986) 01 CAL CK 0032

In the Calcutta High Court

Case No : Income-tax Reference No. 125 of 1976

Commissioner of Income Tax APPELLANT

Vs

Ajit Kumar Bose RESPONDENT

Date of Decision : 06-01-1986

Acts Referred:

Income Tax Act, 1961 — Section 17(3)

Citation : (1986) 52 CTR 250 : (1987) 165 ITR 90 : (1986) 26 TAXMAN 510

Hon'ble Judges : Satish Chandra, C.J;Mukul Gopal Mukherji, J

Bench : Division Bench

Advocate : A.N. Bhattacharya, for the Appellant;S. Chakraborthy, for the Respondent

Judgement

Satish Chandra, C.J.—During the accounting period relevant to the assessment year 1970-71 ending on March 31, 1970, the employer terminated the services of the assessee by giving him the requisite three months'' notice. In addition to the pay and salary for the period of notice, the employer paid to the assessee a sum of Rs. 24,933. The question was whether this amount could be treated as profits in lieu of salary within the meaning of Sub-clause (i) of Clause (3) of Section 17 of the Income Tax Act, 1961 ("the Act"). The employer had, by its letter dated July 3, 1969, stated that in view of the closure of the business of the company, the assessee would be paid the requisite three months'' salary as well as the amount due on account of his leave and in addition, he would be paid an ex gratia sum of Rs. 24,933 which would be subject to Income Tax.

2. The Tribunal has, on a review of the matters on record, found that this amount was received by the assessee as a capital receipt. It has further found that it was really an ex gratia payment; it was not compensation within the meaning of Section 17(3). The Tribunal took the view that the word "compensation" denotes an idea that it is paid in lieu of something which the assessee could claim as of right and of which he was being deprived. The amount in question was an ex gratia payment, i.e., it was paid by the employer voluntarily without being under

any obligation to pay it.

3. Section 17 deals with salary, perquisite and profits in lieu of salary. Clause (3) reads :

"(3) ''profits in lieu of salary'' includes-

(i) the amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment or the modification of the terms and conditions relating thereto."

4. The amount in question was received by the assessee from his employer. It was received by him in connection with the termination of his service. But the question still remains whether it was compensation. Since it was received by the assessee in connection with the termination of his employment, the term "compensation" would be referable to that event. In other words, it is to be seen whether the amount was paid as compensation for the termination or in lieu of the termination of the employment.

5. The letter issued by the employer dated July 3, 1969, stated that the amount was being paid ex gratia. There is nothing to indicate that the assessee was entitled to continue in the employment of the company up to any particular age. Under the conditions of service, his services were liable to be terminated on giving three months'' notice without assigning any reason. Under the circumstances, it cannot be said that the assessee was entitled to remain in service for any period longer after the requisite notice has been given or that the employer was under any obligation to pay anything to the assessee in connection with the termination of his employment other than the salary for the period of notice. Under the circumstances, in its true nature and character, the payment was ex gratia, that is to say, totally voluntary; it was not compensation which implies some sort of an obligation to pay.

6. In this view, it cannot be said that the amount in question was profits in lieu of salary within the meaning of Clause (3) of Section 17. It was not taxable as such. The finding of the Tribunal that the amount was a capital receipt or that it was payment of a casual and non-recurring nature was in the circumstances not necessary. We, hence, do not express any opinion on it.

7. The question of law referred to us in this case, namely :

"Whether, on the facts and in the circumstances of the case, the amount of Rs. 24,933 received by the assessee could be treated as income under the charging section or under the section dealing with the computation of income of the assessee ?"

8. is answered in the negative, in favour of the assessee and against the Department.

9. There will be no order as to costs.

M.G. Mukherji, J.

10. I agree.