(1972) 01 MAD CK 0062

In the Madras High Court

Case No : Tax Case No. 205 of 1966 (Reference No. 52 of 1966)

Commissioner of Income Tax — APPELLANT

Vs

A.M. Kaithan — RESPONDENT

Date of Decision : 17-01-1972

Acts Referred:
Income Tax Act, 1922 — Section 10(2), 23(5)

Citation : (1972) 85 ITR 14 : (1972) 85 LW 391

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : V. Balasubrahmanyan and J. Jayaraman, for the Appellant; K. Srinivasan, D.S. Meenakshisundaram and K.C. Rajappa, for the Respondent

Judgement

Ramanujam, J.—The assessee in this case is a partner in a registered firm called General Swadesi Stores, and for the assessment years 1958-59 1959-60 and 1960-61, he derived share income of Rs. 18,313, Rs. 24,991 and Rs. 26,677, respectively. From the share income received by him, the assessee claimed as deduction u/s 10(2)(xv) of the Income Tax Act, 1922, the salary which he has paid to one Mr. Dalmia, said to have been appointed by him for looking after his interests in the partnership. The Income Tax Officer disallowed his claim for deduction on the ground that the share income of the assessee having been arrived at after giving deductions u/s 23(5)(a) it is not possible to make further deductions u/s 10(2)(xv) in the individual assessment of the assessee as against his share income from the firm. But the Income Tax Officer, however, gave a definite finding that the said Mr. Dalmia has been looking after the interests of the assessee in the firm, and that in fact he was paid his salary by the assessee, and not by the firm. The Appellate Assistant Commissioner also agreed with the view of the Income Tax Officer. The Tribunal, however, held following the decision of this court in Basantlal Gupta v. Commissioner of Income Tax that the assessee is entitled to claim deduction u/s 10(2)(xv) in his individual assessment, even though the share income has been arrived at after giving deductions u/s 23(5)(a). The Tribunal also gave a specific finding that Mr. Dalmia was rendering service only to the assessee by looking after his interests in the firm of General Swadesi Stores in which the assessee was a partner, and that he got remuneration only from the assessee. In view of this finding, it has to be taken that the assessee engaged the services of Mr. Dalmia to earn the share income from the partnership.

2. The question as to whether any deduction u/s 10(2)(xv) is permissible as against the share income received by a partner in his individual assessment has been answered in the affirmative by a decision of this court in Basantlal Gupta Vs. Commissioner of Income Tax, Madras, , which has been approved by the Supreme Court in Commissioner of Income Tax, Bihar Vs. Ramniklal Kothari, . It is therefore clear that the assessee has been rightly held to be entitled to the deduction from his share income of the salary paid by him to Mr. Dalmia. In this view, the question referred is answered in the affirmative and against the revenue. The assessee will have his costs. Counsel''s fee is Rs. 250.