(1989) 03 CAL CK 0040

In the Calcutta High Court

Case No : Income-tax Reference No. 281 of 1979

Commissioner of Income Tax APPELLANT

Vs

Arun Dua RESPONDENT

Date of Decision : 01-03-1989

Acts Referred:
Income Tax Act, 1961 — Section 19

Citation : (1990) 186 ITR 494 : (1989) 45 TAXMAN 246

Hon'ble Judges : Suhas Chandra Sen, J;Bhagabati Prasad Banerjee, J

Bench : Division Bench

Advocate : A.N. Bhattacharjee, for the Appellant;

Judgement

Suhas Chandra Sen, J.—The Tribunal has referred the following questions of law u/s 256(2) of the Income Tax Act, 1961 ("the Act"), to this court :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal had ignored relevant materials and relied on irrelevant and partly irrelevant materials to come to the finding that a sum of Rs. 38,550 and not Rs. 48,000 was paid or payable to the assessee as commission by the American Refrigeration Co. Ltd., and whether such finding of the Tribunal was unreasonable or perverse ?

(2) Whether, on the facts and in the circumstances of the case and on a correct interpretation of the agreement dated December 20, 1965, and having regard to the fact that as per the accounts of the American Refrigeration Company for the year ending April 30, 1966, a total sum of Rs. 1,20,000 was found payable on account of salary and commission of the managing director, the Tribunal''s finding that the sum payable amounted only to Rs. 1,10,550 (i.e., salary of Rs. 72,000 and commission of Rs. 38,550) is based on any admissible evidence or is otherwise perverse ?

(3) Whether, on the facts and in the circumstances of the case and on a proper interpretation of the agreement dated December 20, 1965, between the American Refrigeration Company and the assessee, the Tribunal misdirected itself

in law in holding that the term ''remuneration'' appearing in Clause 5 of the said agreement would include perquisites and benefits mentioned in Sub-clauses (ii) to (vi) of Clause 4 of the said agreement ?"

2. The assessment year involved in this reference is the assessment year 1967-68 for which the corresponding accounting period is the financial year ending on March 31, 1967.

3. The assessee was the managing director of the American Refrigeration Co. Ltd. and was entitled to get salary, commission and other benefits from the company under an agreement entered into by and between the assessee and the company.

4. The case of the assessee was that the agreement to pay salary had to be approved by the Company Law Board and the total remuneration payable to the assessee was restricted to Rs. 1,20,000. The Income Tax Officer, however, did not accept the plea of the assessee and held that the maximum of Rs. 1,20,000 related only to the salary and commission but did not include the value of the perquisites. On appeal, the Appellate Assistant Commissioner agreed with the finding of the Income Tax Officer. On further appeal, the Tribunal observed that the approval of the Company Law Board only provided for a maximum limit but it did not oblige the employer to pay the maximum remuneration approved by the Company Law Board. The employer and the employee had interpreted the agreement and the approval of the Company Law Board as placing the limit of Rs. 1,20,000 on the total remuneration. In that view of the matter, the Tribunal held that the "Revenue authorities were not justified in excluding the value of the benefits out of the maximum remuneration of Rs. 1,20,000 payable to the assessee".

5. In our view, the Tribunal has not committed any error of law in coming to the conclusion which it has reached. It had seen the agreement ; it had seen the ceiling imposed by the Company Law Board with regard to the remuneration of the assessee ; it had seen how the agreement had been interpreted by the company and the employee. If the company and the employee had understood the agreement in a certain way and had acted upon that agreement, it is not open to the Income Tax Officer to give another interpretation and tax the assessee on a hypothetical amount.

6. The questions referred to this court in this reference are answered as under :

Question No. 1 is answered in the negative and in favour of the assessee.

Question No. 2 is answered in the affirmative and in favour of the assessee.

Question No. 3 is answered in the negative and in favour of the assessee.

7. There will be no order as to costs.

Bhagabati Prasad Banerjee, J.

8. I agree.

