

(1981) 06 CAL CK 0004
In the Calcutta High Court
Case No : Income Tax Ref. No. 549 of 1973

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

ARUN DUA.

RESPONDENT

Date of Decision : 23-06-1981

Acts Referred:

Citation : (1982) 26 CTR 74

Hon'ble Judges : Sudhindra Mohan Guha, J;Sabyasachi Mukharji, J

Bench : Full Bench

Judgement

Sabyasachi Mukharji, J. - The assessment relates to the asst. yr. 1967-68. The original assessee is dead now. His legal reversionary and legal heir is his representative. The assessee was an individual and was the Managing Director of American Refrigeration Co. Ltd. and he received a salary, commissions and certain other benefits according to the agreement between him and his employer. The terms of the agreement provided inter alia for the reappointment of Sri. B. S. Dua as the Managing Director of the company for a period not exceeding five years with effect from 8-4-1965 on a remuneration not exceeding the following :

"(1). (a) Salary of Rs. 6,000 per month.

(b) Free furnished accommodation with gas, electricity, telephone, etc. cost not exceeding to the company Rs. 24,000 per annum Mr. B. S. Dua shall be obliged to use the accommodation so provided and to accommodate therein guests of the company, visiting Calcutta in connection with the companys affairs.

(c) Free medical benefit for self and family, subject to the condition that the cost thereof to the company shall not exceed Rs. 15,000 for a period of every three years.

(d) Travelling allowance for annual leave for self & family. Air passage for any place in India.

(e) The use of companys car with driver for companys business.

(f) Benefit of membership of Company's Provident Fund, pension and superannuation funds established or to be established by the company, on such terms and conditions as may be applicable to other senior officers of the company.

(2) In the event of adequacy of profits, the Managing Director is entitled to the remuneration stated in Item No. (i) above, as also such commission on the net profits of the company which together with the remuneration mentioned in Item No. (1) above, would amount at 5% of the net profits of the company as defined in s. 349 of the Companies Act, 1956 subject to the conditions that the remuneration by way of salary and commission of profits shall not in any year exceed Rs. 1,20,000.

The approval as above is subject to the conditions (1) that the remuneration payable to the Managing Director by way of salary and commission on net profits from your company together with the salary and/or commission on net profits from another company shall not exceed Rs. 1,20,000 per annum."

The ITO assessed the salary at Rs. 72,000 and the commission at Rs. 48,000. He valued the benefits which the assessee received from the employer company at Rs. 7,200 on account of the unfurnished rent free quarter Rs. 2,129 free from electricity and Rs. 500 as value of petrol expenses provided by the said company for the assessee's car. The total of salary, commission and perquisites amounted to Rs. 1,29,839. The plea of the assessee before the ITO was that according to the agreement between him and the employer company, as approved by the Company Law Board, the total remuneration payable to him was amounted to Rs. 1,20,000 and that the commission was only 38,550 and not Rs. 48,000. This plea was not accepted by the ITO on the ground that the maximum of Rs. 1,20,000 comprised of salary and commission only and did not include the value of the perquisites.

2. The assessee appealed to the AAC, who agreed with the ITO. The assessee went up in appeal before the Tribunal. The Tribunal after considering the rival contentions observed, *inter alia*, as follows :

"We have given our due consideration to the rival submissions made by the representatives of the parties. According to the assessee he received a salary and commission and the benefits according to the agreement between him and the employer and that the agreement which had also received the approval of the Company Law Board, provided for a maximum remuneration of Rs. 1,20,000. The terms of the agreement are contained in the letter of the Company Law Board addressed to the employer and the assessee. The first term provided for the salary of Rs. 6,000 per month and for certain other benefits of the nature of perquisites. The second term provided for the payment of a commission on net profit. The payment of commission on the net profit, however, was subjected to two limits. Firstly, that the commission would not exceed 5% of the total net profit of the company. Secondly, the commission and the salary would not exceed

Rs. 1,20,000. According to the assessee the second limit included all the remuneration payable to him; that is, the salary and the value of other benefits and the commissions. The revenue authorities took the view that according to the second term, the limit of Rs. 1,20,000 applied only to salary as such and to the commission, that is, the value of other benefits was not included in the limit of Rs. 1,20,000. We find that in interpreting the second term, there is scope for taking both the views. The approval of the Company Law Board only provides for a maximum limit. It does not oblige the employer company to pay the maximum of remuneration approved by the Company Law Board. Both the employer and the employee interpreted the agreement and approval of the Law Board as placing the limit of Rs. 1,20,000 on the total remuneration and it is the term as understood by the parties which has to be given effect to Term 2 cannot be interpreted in a manner in which the parties thereto never intend to mean. We are, therefore, of the view that the revenue authorities were not justified in excluding the value of the benefit out of the maximum of remuneration of Rs. 1,20,000 payable to the assessee.

5. The Income Tax Officer valued the benefits from the unfurnished rent-free quarters at Rs. 7,200. We are, therefore, unable to accept the plea of the representative of the department that the value of the rent-free quarters should be assessed at more and the difference be sustained as addition on reducing the commission from Rs. 48,000 to Rs. 38,550. We accordingly reduce the commission to Rs. 38,550 and direct the Income Tax Officer to modify the assessment."

It appears that the salary certificate given by the company corroborated the assessee's contention. The assessee was an employee of a limited company. In that context, the question which is referred to us, is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in determining the commission of the Managing Director at Rs. 38,550 ?"

3. In view of the fact which we have mentioned hereinafter, we are of the opinion that the Tribunal was right in coming to its conclusion as it did, as indeed, it was the only possible conclusion. In view of the above facts, the question referred to this Court is, therefore, answered in the affirmative and in favour of the assessee.

There will be no order as to costs.

Sudhindra Mohan Guha, J. - I agree.