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(1988) 08 RAJ CK 0072

In the Rajasthan High Court

Case No : IT Reference No''s. 31 of 1983 and 47 of 1984

Commissioner of Income Tax APPELLANT

Vs

Dr. Usha Sharma RESPONDENT

Date of Decision : 29-08-1988

Acts Referred:
Income Tax Act, 1961 — Section 16, 16(i), 256(1), 91(1)

Citation : (1988) 08 RAJ CK 0072

Hon'ble Judges : J.S. Verma, C.J;N.C. Kochhar, J

Bench : Division Bench

Advocate : C.R. Mehta, for the Appellant; R. Balia, for the Respondent

Judgement

J.S. Verma, CJ.

1. This is a reference u/s 256(1) of the income tax Act, 1961 at the instance of the revenue to answer the following questions of law, namely:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was entitled to deduct full amount of tax deducted at source by the Iranian Government on her foreign salary earned in Iran from the tax payable on the said income in India?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law us holding that u/s 16(i) of the income tax: Act, 1961, the assessee is entitled to standard deduction in respect of salary received from each employer separately?

The relevant assessment year is 1976-77. The material facts on the basis of which the above questions of law have to be decided are similar to those in CIT v R.N. Janji [IT Reference No. 36 of 1982]. The above quoted question N 1 is ''domical with the question for decision in R. N. Janji''s case (supra) decided by us today. For the same reasons the above quoted question No. 1 is decided in favour of the revenue and against the assessee in the same manner.

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2. The above quoted question No. 2 has to be answered on the basis of Explanation 1 inserted in clause (i) of section 16 of the Act by the Taxation Laws (Amendment) Act, 1984 retrospectively with effect from 1-4-1975 which is as under:

Explanation 1: For the removal of doubts, it is hereby declared that where, in the case of an assessee, salary is due from, or paid or allowed by, more than one employer, the deduction under this clause shall be computed with reference to the aggregate salary due, paid or allowed to the assessee and shall in no case exceed the amount specified under this clause;

After the insertion of this Explanation retrospectively with effect from 1-4-1975 there is no controversy that the assessee is entitled to standard deduction with reference to the aggregate salary due from all the employers and the amount shall in no case exceed the amount specified under this clause. Accordingly, the assessee is not entitled to a separate standard deduction in respect of the salary received from each employer. Accordingly, the Tribunal''s view in favour of the assessee on this point also cannot be sustained. Consequently, the reference is answered in favour of the revenue and against the assessee as under:

Question No. 1: The Tribunal was not justified in holding that the assessee is entitled to relief u/s 91(1) of the Act of the full amount of tax paid on the total foreign income in the foreign country; and that the assessee is entitled to the relief u/s 91(1) of she Act only of the amount of tax paid on 50 per cent of the total foreign income.

Question No. 2: The Tribunal was not justified in holding that u/s 16(i) the assessee is entitled to standard deduction in respect of the salary received from each employer separately. No costs.

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