
(2001) 12 P&H CK 0069

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No's. 80 to 82 of 1984

Commissioner of Income Tax

APPELLANT

Vs

Ghansham Dass

RESPONDENT

Date of Decision : 04-12-2001

Acts Referred:

Income Tax Act, 1961 — Section 15, 16, 28

Citation : (2002) 254 ITR 355

Hon'ble Judges : Jawahar Lal Gupta, J; Ashutosh Mohunta, J

Bench : Division Bench

Advocate : R.P. Sawhney and Kishan Singh, for the Appellant;

Judgement

Jawahar Lal Gupta, J.—Is the partner in a firm entitled to standard deduction u/s 16(i) of the Income Tax Act, 1961, against the salary drawn by him ? This is the short question that arises for consideration in this case. A few facts as relevant for the decision of this case may be briefly noticed.

2. The assessee is a partner in a firm. He filed his returns for the assessment years from 1978-79 to 1980-81. Besides the share in the profits, he had also drawn salary from the firm. In respect of salary, a claim for deduction u/s 16(i) was made. This claim was accepted by the Income Tax Officer.

3. However, on July 14, 1983, the Assessing Officer passed an order u/s 154 and disallowed the claim for deduction. The assessee filed an appeal. It was dismissed. He approached the Tribunal. The assessee having succeeded, the Revenue filed three petitions u/s 256(1). These petitions were accepted. The Tribunal has referred the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the assessee is entitled to standard deduction u/s 16(i) of the Income Tax Act, 1961, against the salary income from the firm in which he is a partner in each of the accounting periods relevant to the assessment years 1978-79, 1979-80 and 1980-81 ?"

4. Mr. R. P. Sawhney, learned counsel for the Revenue, contended that the Tribunal had erred in accepting the claim of the assessee for deduction u/s 16(i), Learned counsel referred to the decisions in CIT v. Pramod Kumar Jain [1995] 216 ITR 598 and Commissioner of Income Tax Vs. N.S.M. Sankarapandian, .

5. The case was initially taken up for hearing on November 28, 2001. No one had appeared for the assessee. The case was adjourned to November 29, 2001. Even on that day, the assessee had chosen to stay away. The arguments were, thus, concluded and the order was reserved.

6. Chapter IV of the Act deals with the computation of total income. Section 14 provides for the classification of income under various heads. Income from "salaries" is treated separately from the income on account of "profits and gains of business or profession". u/s 15, the "income shall be chargeable to Income Tax under the head "Salaries" when it is paid or due from an employer to an employee." u/s 16, the deductions are admissible only from "the income chargeable under the head "Salaries"...". Thus, it is clear that an assessee is entitled to deductions u/s 16 only when he has received salary from an employer. Not otherwise.

7. The Tribunal while considering the matter placed reliance on the provision of Section 67 of the Act. On the basis of this provision, the Tribunal took the view that "a partner can draw salary from the firm in which he is a partner." By referring to the decision of the Madras High Court in Commissioner of Agricultural Income Tax Vs. Tipperary Estates Company, , the Tribunal held that "a partner of a firm is entitled to salary for rendering the services to the firm and in case a person draws salary he is entitled to the statutory deduction u/s 16 of the Act..." It appears that even the Bombay Bench of the Tribunal had taken a similar view in Mohammed Ibrahim Shahdad v. ITO. Is this view correct ?

8. Section 67 of the Act lays down the method of computing a partner's share in the income of the firm. "Salary" is one of the components. However, the "salary" as contemplated u/s 67 does not qualify for deduction unless it meets with the requirements of Section 15. Under this provision, only that income can be assessed under the head "Salaries" which is due from or paid by an employer to an employee. Otherwise, the amount paid by the firm to a partner "by whatever name called" shall fall under the category of "profits and gains of business or profession."

9. In the present case, there was no relationship of an employer and an employee between the firm and the assessee. Thus, the income disclosed by the assessee as salary would not fall within Section 15. Consequently, the deductions as contemplated u/s 16 shall not be available to him.

10. The matter is not res integra. In Commissioner of Income Tax, Madras Vs. R.M. Chidambaram Pillai and Others, , the question posed was-"What is the real nature of the salary paid to a partner vis-a-vis the income of the firm ? It was answered in the following words :

"On principle, payment of salary to a partner represents a special share of the profits and is, therefore, part of the profits and taxable as such."

11. Still further, in Parmod Kumar Jain's case [1995] 216 ITR 598 , it was held that (page 600): "the control and supervision of the employer is a sine qua non of the relationship between the employer and the employee. In accordance with the provisions of Section 16 of the Act, the deduction is allowable from the income which is chargeable under the head of "Salary". In the case of a partner, the income which is received by way of salary is of the same character as income from business."

12. This view was reiterated by the Madras High Court in Commissioner of Income Tax Vs. N.S.M. Sankarapandian, .

13. The concept of "salary" goes back to the days of the Roman Empire. The soldiers were given "Sal" (salt) as a reward for their services. With the passage of time, the mode has changed from salt to money. However, "salary", in its conceptual and legal sense, remains a reward for services rendered.

14. The partners in a firm work for themselves. Not for any employer. They serve themselves. Not anybody else. They are nobody's servants. They are their own masters. Thus, the salary drawn by the partners is only a different name for the share in profits. Nothing more. The doubt, if any, was set at rest by the incorporation of Section 28(v) with effect from April 1, 1993, when it was provided that "any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from such firm" shall be "chargeable to income tax" under the head "Profits and gains of business or profession."

15. In view of the above, we hold that the Tribunal was not right in allowing the standard deduction to the assessee. The question is, accordingly, answered in favour of the Revenue. Since no one has appeared for the respondent, we make no order as to costs.