

(1988) 07 CAL CK 0031

In the Calcutta High Court

Case No : Income-tax Reference No. 256 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Jamini Mohan Kar

RESPONDENT

Date of Decision : 05-07-1988

Acts Referred:

Income Tax Act, 1961 — Section 17, 17(3)

Citation : (1989) 176 ITR 127

Hon'ble Judges : K.M. Yusuf, J;Ajit Kumar Sengupta, J

Bench : Division Bench

Advocate : S.K. Mitra, for the Appellant;

Judgement

Ajit Kumar Sengupta, J.—At the instance of the Commissioner of Income Tax, West Bengal-VII, Calcutta, the following question of law has been referred to this court u/s 256(1) of the Income Tax Act, 1961, for the assessment year 1970-71 :

"Whether, on the facts and in the circumstances of the case and on a correct interpretation of Section 17(3)(i) of the Income Tax Act, 1961, the Tribunal was correct in holding that the sum of Rs. 36,326 was not includible in the total income of the assessee ?"

2. The facts leading to this reference are stated hereafter. The assessment year involved is 1970-71. The assessee was an employee working in one of the units of Guest Keen William Ltd. This unit was closed and in consequence the services of the assessee were terminated. By letter dated July 3, 1969, the said company informed the assessee that his services would not be required with effect from July 3, 1969, and that pursuant to the standard conditions of service for junior management staff, he would be paid three months' salary in lieu of notice together with salary for the month of July 1969, and salary for the leave accrued to his credit. He was also informed that in addition he would be paid ex gratia a sum of Rs. 35,370 out of which Income Tax would be deducted at source. The ex gratia amount received was Rs. 36,326 and exemption from tax was claimed by

the assessee in respect thereof on the ground that it was a capital receipt and in view of the decision of the Supreme Court in the case of Commissioner of Income Tax, West Bengal I Vs. K.K. Roy, , it could not be included in the taxable income. The Income Tax Officer, however, held that the amount in question was compensation received in connection with the termination of the employment and was, therefore, assessable as salary in terms of Section 17(3)(i) of the Income Tax Act, 1961.

3. Before the Appellate Assistant Commissioner, the assessee reiterated the contentions as raised before the Income Tax Officer and also relied upon the Tribunal's decision in an identical case of Commissioner of Income Tax Vs. Ajit Kumar Bose, . The Appellate Assistant Commissioner, however, agreed with the Income Tax Officer that the amount in question was assessable as compensation received and, therefore, he declined to interfere.

4. Being aggrieved by the order of the Appellate Assistant Commissioner, the assessee came up in appeal before the Tribunal. Counsel, on behalf of the assessee, reiterated the submissions of the assessee before the Tribunal which the assessee made before the authorities below. A copy of the decision of the Tribunal dated February 28, 1975, in ITA No. 3237 (Cal) of 1972-73, in the case of Ajit Kumar Bose relating to the assessment year 1970-71 was also placed before the Tribunal and it was submitted on behalf of the assessee that the issue had been considered already by the Tribunal and the decision taken therein was applicable to the present case as the facts were identical. Both the parties stated that they would be adopting the same judgments as were advanced before the Tribunal in that case. The Tribunal observed that the aforesaid decision was applicable to the facts of that case and following the same, therefore, upheld the contention of the assessee that the amount in question was not includible in the total income.

5. The Tribunal, as indicated earlier, has relied on its own decision in the case of Ajit Kumar Bose relating to the same assessment, year. The said reference came up for consideration before this court which is reported in Commissioner of Income Tax Vs. Ajit Kumar Bose, . There, this court held that the payment made by the employer was ex gratia and totally voluntary and was not compensation which implied some sort of obligation to pay. Therefore, the amount received by the employee was not profits in lieu of salary within the meaning of Section 17(3) of the Act and, as such, was not taxable as income, The facts being identical, the said decree governed this case also. In the premises, we answer the question referred to this court in this reference in the affirmative, in favour of the assessee and against, the Revenue.

6. There will be no order as to costs.

K.M. Yusuf, J.

7. I agree.