(1989) 08 DEL CK 0041

In the Delhi High Court

Case No : Income-tax Case No. 272 of 1983

Commissioner of Income Tax APPELLANT

Vs

Jay Engineering Works Ltd. RESPONDENT

Date of Decision : 01-08-1989

Acts Referred:

Citation : (1990) 182 ITR 181

Hon'ble Judges : C.L. Choudhary, J;B.N. Kirpal, J

Bench : Division Bench

Judgement

B.N. Kirpal, J.—In This petition u/s 256(2), the petitioner want a direction that the Tribunal should be required to state the case and refer the following two question of law to this court :

"1. Whether, on the facts and in the circumstance of the case, the learned Tribunal was right in holding that house rent allowance, reimbursement of medical expenses and conveyance allowance on holiday trip are admissible items u/s 40A(5) of the e Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstance of the case, the learned Tribunal erred in law in holding that the sum of Rs. 39,436 credited to the P & D account representing cessation of liabilities of earlier years is not taxable u/s 41(1) of the Income Tax Act, 1961 ? "

2. The first question of law relates to the disallowance of sums paid in cash to the employees by the respondent-assessed. This amount was allowed under the provisions of section 40A(5) of the Income Tax Act. It is contended by learned counsel for the petitioner that the question involves the interpretation of the said provision. We, however, find that this provision, prior to its amendments, was interpreted by this court in the case of Installment Supply P. Ltd. Vs. Commissioner of Income Tax, New Delhi, . In the said decision, reference is also made to the provision with effect from April 1, 1972. It was held by this court that the expression "benefit, amenity or perquisite" as used in the section does

not include cash payment by the company. Even though the said decision in Installment Supply P. Ltd. Vs. Commissioner of Income Tax, New Delhi, was in respect of assessment years prior to 1972, we are of the opinion that the ratio of the said decision is applicable even at present to the present section 40A(5) but the said provision nowhere suggests that any payment made in cash to employees is covered by the said provision. The answer to the question is, Therefore, self-evident and this is in consonance with the decisions of the other High Courts in India.

3. As regards question No. 2, we are of the opinion that a question of law does arise and we, Therefore, direct the Tribunal to state the case and refer the following question of law of this court :

"Whether, on the facts and in the circumstances of the case, the learned Tribunal erred in law in holding that the sum of Rs. 39,436 credited to the P & D account representing cessation of liabilities of earlier years is not taxable u/s 41(1) of the Income Tax Act, 1961 ? "

4. No order as to costs.

