
(1979) 11 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No's. 85 to 88 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Justice S.C. Mittal

RESPONDENT

Date of Decision : 21-11-1979

Acts Referred:

Income Tax Act, 1961 — Section 10(13A)
Income Tax Rules, 1962 — Rule 2A

Citation : (1980) 15 CTR 294 : (1980) 2 ILR (P&H) 164 : (1980) 121 ITR 503

Hon'ble Judges : G.C. Mittal, J; Bhupinder Singh Dhillon, J

Bench : Division Bench

Advocate : D.N. Awasthy and B.K. Jhingan, for the Appellant; G.C. Sharma, D.V. Sehgal, S.S. Raikhy and R.K. Aggarwal, for the Respondent

Judgement

B.S. Dhillon, J.—The following question of law arising out of the order of the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as "the Tribunal"), in respect of I.T.A. Nos. 47, 48, 294 and 295 of 1977-78, for the assessment years 1972-73, 1973-74, 1974-75 and 1975-76, respectively, has been referred to us by the Tribunal at the instance of the revenue :

"Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in holding that the amount received by the assessee on account of house rent allowance was not liable to be included in his taxable income for each of the four years ?"

2. The brief facts giving rise to these references may thus be stated. The assessee, Hon'ble Mr. Justice S.C. Mittal, is a sitting Judge of the Punjab and Haryana High Court. He claimed exemption in respect of house rent allowance (hereinafter shortly referred to as "the HRA") which he received at Rs. 3,150 in each of the first two years, Rs. 3,293 for the third year and Rs. 2,564 for the last year. The house in question is jointly held by Mr. Justice S.C. Mittal with his brother and Mr. Justice S.C. Mittal was paying a rent of Rs. 300 per month to his

brother for occupying his portion of the house. As is clear from the facts the HRA was assessed and out of the assessed amount, Rs. 350 per month, i.e., 10 per cent. of the pay of the hon"ble justice was being deducted by the Government and the assessed amount over and above the amount of Rs. 350 per month was paid to the hon"ble judge. The plea that the said amount was exempt in view of the provisions of Section 10(13A) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), read with Rule 2A of the Income Tax Rules, 1962 (hereinafter referred to as "the Rules"), did not find favour with the ITO.

3. It was contended before the AAC that the assessee's occupation of the entire house for his residence, half of which belonged to his brother, tant-amounted to the assessee incurring expenditure. It was further contended that HRA was granted by the Govt. after the annual letting value of the house in occupation of Mr. Justice S.C. Mittal was determined by the Public Works Department and only the excess amount over 10 percent. of the salary was allowed as HRA which was not taxable. The AAC accepted the appeal and deleted the additions for each of the four years.

4. The appeal filed by the revenue was dismissed by the Tribunal. At the instance of the revenue, the question, reference to which has already been made in the earlier part of the order, has been, referred to this court for its opinion.

5. With a view to appreciate the contentions raised by the learned counsel for the parties, the provisions of Section 10(13A) of the Act and Rule 2A of the Rules may be reproduced as under :

"10. Incomes not included in total income.--In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included--.....

(13A) any special allowance specifically granted to an assessee by his employer to meet expenditure actually incurred on payment of rent (by whatever name called) in respect of residential accommodation occupied by the assessee, to such extent (not exceeding three hundred rupees per month) as may be prescribed having regard to the area or place in which such accommodation is situate and other relevant considerations."

"2A. Limits for the purposes of Section 10(13A).--The amount which is not to be included in the total income of an assessee in respect of the special allowance referred to in Clause (13A) of Section 10 shall be-

(a) the actual amount of such allowance received by the assessee in respect of the relevant period; or

(b) the amount by which the expenditure actually incurred by the assessee in payment of rent in respect of residential accommodation occupied by him exceeds one-tenth of the amount of salary due to the assessee in respect of the relevant period ; or

(c) an amount equal to-

(i) where such residential accommodation is situate at Agra, Ahmedabad, Allahabad, Calcutta, Cochin, Coimbatore, Delhi, Hyderabad, Indore, Jabalpur, Jaipur, Kanpur, Lucknow, Madras, Madurai, Nagpur, Patna, Poona, Sholapur, Srinagar, Surat, Trivandrum, Vadodara (Baroda) or Varanasi (Banaras), one-fifth of the amount of salary due to the assessee in respect of the relevant period, and

(ii) where such residential accommodation is situate at any other place, one-tenth of the amount of salary due to the assessee in respect of the relevant period; or

(d) a sum calculated at the rate of Rs. 400 per month in respect of the relevant period, whichever is the least..... "

6. After hearing the learned counsel for the parties and taking into consideration the provisions of law, we are of the opinion that the question referred to us has to be answered in the negative, i.e., against the revenue and in favour of the assessee. The provisions of Section 10(13A) of the Act have been enacted to compensate the assessee regarding the expenditure incurred on payment of rent in respect of residential accommodation occupied by him. The main object for enacting this provision appears to be that in case an assessee actually suffers monetary loss by way of expenditure or otherwise in respect of residential accommodation occupied by him and if he is compensated by his employer in that case, subject to the limitations imposed under the Act and the Rules, the allowance paid to him by the employer, shall be exempt from Income Tax. An assessee, who occupies his own house, has disentitled himself from the rent which he would have been entitled to if he had not occupied the same himself, and in that sense he suffered expenditure in that regard. In that sense, an assessee occupying his own house, if compensated by the employer by payment of a special allowance (HRA), subject to the restrictions as imposed under the Act and the Rules, the compensation paid to the assessee by his employer, cannot be subjected to tax. The Tribunal accepted the interpretation of the relevant provisions of the Act and we do not find any reason to take a different view than the one taken by the Tribunal.

7. Even otherwise, on the facts of the present case, it is clear that half of the house of Mr. Justice S.C. Mittal, which he was occupying, is owned by him and the remaining half portion of the house is owned by his brother to whom he has been paying the rent at the rate of Rs. 300 per month. Thus, it cannot be said that, on the facts and circumstances of this case, Mr. Justice S.C. Mittal has not incurred any expenditure even though he having paid a rent of Rs. 300 per month to his brother within the meaning of Section 10(13A) of the Act.

8. The matter can be looked at from another angle also. The provisions of Section 10(13A) of the Act and Rule 2A of the Rules have to be given effect to. The Rules and the section are not in conflict with each other. Rather, the Rules are supplementary to the section. Even if the assessee's case is covered by the

Rules, the assessee will be entitled to exemption. The Rules impose the maximum limit to the extent of Rs. 400 per month. Admittedly, the house rent allowance paid to Mr. Justice S.C. Mittal during all the four relevant assessment years was below the maximum prescribed limit. It is equally well settled that even if two interpretations of a particular provision are possible, in that case, the I. T. Act, being a taxing statute, one favourable to the assessee would be preferred. The view taken by the Tribunal in this regard is unexceptional.

9. For the reasons recorded above, we answer the question referred to us in the negative, i.e., against the revenue and in favour of the assessee, with costs.

G.C. Mittal, J.

10. I agree.