

(1971) 04 AHC CK 0013

In the Allahabad High Court

Case No : Income-tax Reference No. 111 of 1967

Commissioner of Income Tax

APPELLANT

Vs

K.L. Raizada

RESPONDENT

Date of Decision : 29-04-1971

Acts Referred:

Income Tax Act, 1922 — Section 10(2)

Citation : (1973) 87 ITR 151

Hon'ble Judges : R.S. Pathak, J;H.N. Seth, J

Bench : Division Bench

Judgement

H.N. Seth, J.—The Income Tax Appellate Tribunal has referred the following question for the opinion of this court at the instance of the Commissioner of income tax:

" Whether, on the facts and circumstances of the case, the Tribunal was correct in holding that the salary payment of Rs. 12,000 to Shri P. N. Suri was an expenditure incurred by the assessee wholly and exclusively for the purposes of earning share of profits and remuneration from M/s. Standard & Co. and as such was an allowable deduction under the provisions of the Income Tax Act?"

2. The assessee in this case is a Hindu undivided family, of which Shri K.L. Raizada is the karta. Shri K.L. Raizada became a partner in the firm, M/s. Standard & Co., Kanpur, in his capacity as karta of his family. For the assessment year 1961-62 the Standard & Company was assessed off a total income of Rs. 1.61,602. The assessee's share in the income of the said firm was determined at Rs. 18,843. This amount included a sum of Rs. 12,000 which was payable to Shri K.L. Raizada for working as assistant managing director under the partnership deed of M/s. Standard & Co.

3. The deed of partnership provided that Shri K.L. Raizada was entitled to nominate any person other than himself to be the whole-time worker of the company at a remuneration to be paid out of his remuneration. Shri Raizada

appointed one P.N. Suri to work as the assistant managing director and the whole of the remuneration which was to be received by him was paid to Shri P.N. Suri.

4. The assessee contended that the sum of Rs. 12,000 paid to Shri P. N. Suri should not be included in its income. In the alternative, it was claimed that in case the sum of Rs. 12,000 was included in the assessee's income, it should be allowed a corresponding deduction of that amount as an expenditure incurred by the assessee for earning profits.

5. The Tribunal ultimately held that the character of the salary paid to P.N. Suri continued to be remuneration paid to Shri K.L. Raizada, partner of the firm. It came to the conclusion that the salary, in the first place, accrued to Shri K.L. Raizada and he in his own turn employed Shri Suri and paid the entire remuneration to him for his services. It held that the salary paid to Shri Suri could be treated as salary paid to Shri K.L. Raizada as partner of M/s. Standard & Co. In the circumstances, the Income Tax Officer was justified in treating the said salary as paid to a partner in the assessment of M/s. Standard & Co. and consequently clubbing it with the share income of Shri K.L. Raizada. It further held that the assessee was entitled to claim the deduction in respect of the amount of Rs. 12,000 paid to Shri P. N. Suri. In the result, it allowed the appeal and directed the deletion of a sum of Rs. 12,000 from the total income of the assessee.

6. The Commissioner of Income Tax then made an application u/s 66(1) of the Income Tax Act and got the aforesaid question referred to this court for opinion.

7. The Tribunal has recorded a clear finding that, on the facts and the circumstances of this case, it is abundantly clear that in terms of Clause (7) of the partnership deed of M/s. Standard & Co., the assessee exercised the option of nominating Shri P.N. Suri to work for and on his behalf. In order to earn the salary, as mentioned in Clause (7) of the partnership deed the assessee had necessarily to spend that amount in the shape of remuneration paid to Shri P. N. Suri. Shri K.L. Raizada did not keep any part of the salary to himself, but he parted with the entire amount and gave it to Shri P.N. Suri. In the result, the Tribunal held that Shri K.L. Raizada, the assessee, had to incur an expenditure of Rs. 1,000 per month in order to earn the amount of salary stipulated in Clause (7). In this view of the matter, it held that a deduction of Rs. 12,000 in the assessment of the assessee, for the year under consideration, should be allowed. On the finding that the amount of Rs. 12,000 was spent by the assessee in order to earn the amount of salary stipulated under Clause (7) of the partnership deed, it is clear that the assessee is entitled to claim the same as deduction u/s 10(2) (xv) of the Act.

8. In the result, we answer the question referred to us in the affirmative and in favour of the assessee. The assessee is entitled to his costs which we assess at Rs. 200. Counsel's fee is also assessed at the same figure.