

(2003) 01 DEL CK 0105

In the Delhi High Court

Case No : IT Ref. No. 115 of 1985 23 January 2003

Commissioner of Income Tax

APPELLANT

Vs

Krishan Kumar Modi

RESPONDENT

Date of Decision : 23-01-2003

Acts Referred:

Citation : (2003) 131 TAXMAN 229

Hon'ble Judges : Madan B. Lokur, J; Madan B. Lokur, J; D.K. Jain, J

Bench : Full Bench

Advocate : R.D. Jolly and Ms. Rashmi Chopra, for the Revenue S.K. Aggarwal and Vinay Vaish, for the assessee, for the Appellant;

Final Decision : Disposed Off

Judgement

D.K.. Jain, J.

At the instance of (the revenue, the Income Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal") has referred u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the following questions for the opinion of this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in directing that the value of perquisite in respect of accommodation be limited to the value fixed by the prescribed authority u/s 9 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the amount remuneration at the rate of 1 per cent of the net profit of Modipon Ltd. did not accrue to the assessed as the amount of remuneration was foregone even before the right to receive remuneration accrued ?"

2. The reference pertains to the assessment year 1980-81. Since answers to both the questions stand concluded by decisions of this court, we deem it

unnecessary to deal with the issues raised by the revenue afresh. Insofar as the first question is concerned, the controversy relates to the determination of value of the perquisite provided to the respondent-assessed by way of a rent-free accommodation. A similar question had come up for consideration of this court in Commissioner of Income Tax Vs. M.K. Modi, , wherein it was held that for determining the market value of the perquisite the basis has to be the standard rent fixed by the Rent Controller in respect of similar accommodation by another person u/s 9 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. Following the said decision, we answer the first question in the affirmative, i.e., in favor of the assessed and against the revenue.

3. As regards the second question, the same issue came up for consideration of this court in Seth Madan Lal Modi Vs. Commissioner of Income Tax (Central), , to which one of us (D.K. Jain, J) was a party. It was held that remuneration at the rate of one per cent of the net profits of the company did not accrue to the assessed in the relevant assessment year because; firstly the Articles of Association, providing for payment of such remuneration could not be made operative without the approval of the Central Government, which admittedly had not been received during the relevant previous year and secondly, the Board of directors had decided to forego the said remuneration much prior to the end of the previous year of the company. Admittedly, the same situation prevails in the case of the present assessed in respect of the assessment year in question. Following the said decision, we answer the second question also in the affirmative, i.e., in favor of the assessed and against the revenue.

4. The reference stands disposed of in the above terms with no orders as to costs.