
(1984) 11 AHC CK 0019

In the Allahabad High Court

Case No : Income Tax Application No. 133 of 1983

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

KRISHAN KUMAR MODI.

RESPONDENT

Date of Decision : 05-11-1984

Acts Referred:

Income Tax Act, 1961 — Section 17, 256

Citation : (1985) 49 CTR 306 : (1985) 22 TAXMAN 485

Hon'ble Judges : Om Prakash, J

Bench : Division Bench

Judgement

JUDGMENT : Om Prakash, J. - This is an application under s. 256(2) of the IT Act, 1961 (the Act) for the asst. yr. 1973-74 by the petitioner praying that the Tribunal be directed to refer the following question to this Court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the amount of remuneration at the rate of 1% of the net foregone even before the right to receive profit of Modipon Ltd. did not accrue to the assessee as the amount of remuneration accrued ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was legally right in holding that the addition of Rs. 36,305 made by the ITO on account of value of perquisite for the use of accommodation, furniture and air-conditioner and electricity and water cannot be sustained and in relying on the certificate of the Finance Secretary, Modi Industries, that till 31-3-1973, the assessee was not allotted any accommodation by the company by ignoring the material that during the accounting year ending on 31-3-1973 the assessee, a director of the Modipon Industries occupied furnished accommodation belonging to the company and had himself shown value of perquisite for use of furniture at Rs. 1,695 was liable to be assessed under s. 17(2) of the IT Act on account of perquisite of free use of accommodation, furniture and water and electricity ?"

2. We have heard Shri Bharatji Agrawal, the Id. counsel for the petitioner, and

Shri Sudhir Chandra Agarwal, the Id. counsel for the assessee. Shri Bharatji Agrawal at the very outset states that the question No. 1 has already been referred to by the Tribunal itself under s. 256(1) of the Act. This being so the question No. 1 does not require any consideration.

3. Then the question No. 2 is a question of law and whether the Tribunal can be directed to refer the same to this Court under s. 256(2). From the reassessment order, it appears that the ITO assessed the following perquisites in the hands of the assessee :

"Value of perquisite for accommodation, furniture and air-conditioner, etc., as discussed in detail in the asst. yr. 1971-72 35,000

Rs.

Value of electricity and water by estimate

3,000

38,000

Less : Value of furniture already assessed

1,695

36,305

Both, the Commissioner (Appeals) and the Tribunal consistently held that the perquisite amounting to Rs. 36,305 could not be assessed in the hands of the assessee. The reason given by the Tribunal in paragraph No. 9 of its order dated 20-10-1981 is as follows :

"We hold that the material on record does not justify a conclusion that Shri K. K. Modi was given independently any free quarters during the accounting period relevant to the asst. yr. 1973-74 We further hold that there was acceptable evidence to conclude that the assessee was living along with his father in No. 1, Modi Bhawan, Modi Nagar throughout the previous year relevant to the asst. yr. 1973-74."

4. From the above finding of the Tribunal, it clearly appears that purely a finding of fact was not given exclusive possession of the residential accommodation and that he had lived with his father throughout the previous year relevant to the asst. yr. 1973-74. It is manifest that the father of the assessee had been assessed in respect of the residential house having the air-conditioner and other amenities of electricity, water, etc. On these facts, we are of considered view that no question of law is involved as the Tribunal clearly recorded a finding of fact that the assessee had not enjoyed the Tribunal clearly recorded a finding of fact that the assessee had not enjoyed the residential house independently but he had lived only with his father, who being a director was himself assessed in respect of the perquisite.

5. In the result, the application is dismissed. The parties will bear their own costs.