
(2000) 06 BOM CK 0083

In the Bombay High Court

Case No : IT Appeal No. 342 of 2000 6 June 2000

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

L.A. ROSEMAN

RESPONDENT

Date of Decision : 06-06-2000

Acts Referred:

Citation : (2000) 164 CTR 509 : (2000) 4 MhLj 1 : (2000) 111 TAXMAN 507

Hon'ble Judges : S.H. Kapadia, J; R.M.S. Khandeparkar, J

Bench : Full Bench

Advocate : R.V. Desai and P.S. Jetley, for the Revenue and S.E. Dastoor and J.D. Mistry, for the Assessee, for the Appellant;

Judgement

Kapadia, J.

The short point which arises for consideration in this appeal is : Whether living allowance paid to a foreign technician constituted income of the assessee ?

2. The assessee was a German citizen. He was a regular employee of a German company. The German company had entered into a technical assistance agreement with Tata Electric Co., Bombay. Pursuant to the said agreement, the assessee was deputed to India to do the work of commissioning of cables. This was during the period 2-4-1987 to 17-6-1987 and also during the period 8-10-1987 to 31-3-1988. During this period in Bombay, he stayed in a hotel. His hotel expenses, amounting to Rs. 3.30 lakhs, were reimbursed by Tata Electric Co. The question before us, therefore, is: whether the said amount is taxable as income of the assessee under the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The assessing officer held that the assessee was a regular employee of Tata Electric Co. That, during the aforesaid period, the place of his duty was in India and not West Germany. That, he was given accommodation in a hotel in India under the terms of his deputation and, therefore, the place where he ordinarily resided was in India and not West Germany and as the reimbursement of hotel expenses was granted to meet his personal expenses at

the place where the duties of his office were performed, the Explanation to section 10(14) of the Act stood attracted and the amount, therefore, was taxable as income. The assessing officer further found that the said amount was also taxable as profit in lieu of salary. Being aggrieved by the decision, the assessee preferred an appeal to the Commissioner (Appeals). The appellate authority came to the conclusion that the said reimbursement was not a salary nor did it constitute profit in lieu of salary. The appellate authority also found on facts that the assessee was not an employee of Tata Electric Co. That, under the contract, the assessee was entitled to reimbursement of boarding and lodging expenses which were borne by Tata Electric Co. which, in any event, was not the employer of the assessee. Accordingly, the appellate authority directed the assessing officer to delete the said reimbursement from the taxable salary of the assessee. This decision has been confirmed by the Tribunal. Hence this appeal.

3. Mr. Desai, the learned senior counsel, appearing on behalf of the department, contended that in view of section 2(24)(iiiia) and in view of section 2(24)(iiib), any special allowance granted to the assessee to meet expenses only for the performance of the duties of an office or any other allowance granted to the assessee to meet his personal expense at the place where the duties of his office are performed, would constitute "income". On the other hand, it had been contended on behalf of the assessee that by no stretch of imagination, an amount paid by way of reimbursement could ever constitute an allowance. It was urged that the assessee came to India on a special assignment. That, he was reimbursed to the extent of meeting hotel expenses. That, as correctly found by the Commissioner (Appeals) and the Tribunal, the assessee was not an employee of Tata Electric Co. That, in terms of the contract, the assessee was to be reimbursed by Tata Electric Co., subject to the maximum limit. That, even according to the assessing officer, it was a case of reimbursement. In the circumstances, it was urged that such a reimbursement cannot constitute an income in the hands of the assessee. It was not a salary. Therefore, it cannot be brought to tax as salary or as profit in lieu of salary.

4. We find merit in the contentions advanced on behalf of the assessee. The present matter concerns the assessment year 1988-89. In the present matter, Tata Electric Co. had entered into an agreement with a German company. The assessee was an employee of the German company. His salary was paid by the German company. His boarding and lodging expenses, subject to the maximum limit, were paid by Tata Electric Co., as the assessee was required to stay in Bombay in a hotel. The assessing officer erred in coming to the conclusion that the assessee was a regular employee of Tata Electric Co. and that during his stay in India, the place of his employment was India and, therefore, the aforesaid amount constituted his income. The assessee was given a special assignment by the German company, For that, he came to Bombay. During the said period, he resided in a hotel in Bombay. There is nothing to indicate that the place of his duty or employment was India. In the circumstances, provisions of section 2(24) are not attracted. In the case of Commissioner of Income Tax Vs. Goslino Mario

and Others, , the facts were similar to the present case. In that matter, the assesseees were technicians who came to India to work with Fertilizer Corp'n. of India Ltd. in Assam. The services of the assesseees were obtained by FCI under an agreement with an Italian firm. Under the agreement, the salaries were to be paid by FCI in Italian Lira, but the daily allowances were to be paid directly in Indian rupees. one of the questions which arose before the High Court was: whether the daily allowance paid to the assesseees was taxable as salary. It was held that in view of section 10(14), any special allowance granted to meet expenses incurred for the purposes or the duties of an office or employment was exempt from tax to the extent that such expenses were actually incurred for that purpose. It was also held that the word "perquisite" would also not apply to reimbursement of necessary disbursement. It was also held that if an amount was paid by way of reimbursement of an expenditure incurred in the performance of the duties, the same would not be liable to be taxed as salary. It was held that as the assesseees were foreign technicians and as they were required to stay away from their home, the daily allowance given to them was relatable to the extra expenditure which the assesseees were required to pay on food, etc., which was necessary for the performance of duties and such reimbursements stood excluded from the purview of the Act. This decision of the High Court has been upheld by the Supreme Court in the case of Commissioner of Income Tax Vs. Gosline Mario and Others, .

Accordingly, the appeal is dismissed.