

(2003) 01 DEL CK 0110

In the Delhi High Court

Case No : IT Ref. No. 364 of 1984 & IT Reference No. 364 of 1984 23 January 2003

Commissioner of Income Tax

APPELLANT

Vs

Mahendra Kumar Modi

RESPONDENT

Date of Decision : 23-01-2003

Acts Referred:

Citation : (2003) 130 TAXMAN 271

Hon'ble Judges : 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;

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 amount of remuneration at the rate of 1 per cent of the net profit of the company known as Modipon Ltd. agreed to the assessed so as the addition of Rs. 22,081 to the total income of the assessed for assessment year 1979-80 ?

2. Whether, on the facts and in the circumstances of the case, the perquisite value in respect of residential accommodation made available to the assessed be limited to the value fixed by the legal authority u/s 9 of the U.P. Urban Buildings Act, 1971 and not under rule 3B of the Income Tax Rules, 1962 ?"

2. The reference pertains to the assessment year 1979-80. Since answers to both the questions stand concluded by decision of this court, we deem it unnecessary to deal with the issues raised by the revenue afresh.

3. Insofar as the first question is concerned, the same issue came up for consideration of this court in *Seth Madan Lal Modi v. CIT* (2003) 126 Taxman 129 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 first question in the affirmative, i.e., in favor of the assessed and against the revenue.

4. As regards the second question, 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 second question also in the affirmative, i.e., in favor of the assessed and against the revenue.

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