
(2003) 02 DEL CK 0094

In the Delhi High Court

Case No : Income-tax Reference No. 6 of 1984

Commissioner of Income Tax

APPELLANT

Vs

Maresh Kumar Modi

RESPONDENT

Date of Decision : 06-02-2003

Acts Referred:

Income Tax Act, 1961 — Section 17

Citation : (2004) 266 ITR 192 : (2004) 138 TAXMAN 180

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

Bench : Division Bench

Advocate : R.C. Pandey, for the Appellant; S.K. Aggarwal, for the Respondent

Judgement

D. K. Jain J.

1. At the instance of the Revenue, the Income Tax Appellate Tribunal, New Delhi ("the Tribunal" for short), has referred u/s 256(1) of the Income Tax Act, 1961 (for short "the Act"), the following questions for our opinion :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in limiting the value of the perquisite in respect of the residential accommodation at Modinagar to the value fixed by the prescribed authority under 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 Tribunal was justified in law in reducing the value of perquisites in respect of concessional electricity and water supplied to the assessed to Rs. 1,000 only and thereby ignoring the provisions of Rule 3 of the Income Tax Rules, 1962 ?"

2. We have heard Mr. R. C. Pandey, learned senior standing counsel for the Revenue, and Mr. S. K. Aggarwal, learned counsel for the assessed.

3. Since, in our opinion, the answers to both the questions, stand concluded by decisions of this court, we deem it unnecessary to state the facts and examine

the issue raised all over again. It would suffice to note that the first issue relates to the determination of the value of the perquisite in respect of the accommodation, provided by the employer company to the assessed. Relying on Rule 3 of the Income Tax Rules, 1962, the Assessing Officer took the value of the said perquisite at 10 per cent, of the salary paid to the assessed by the company. However, in the assessed's appeal, the Appellate Assistant Commissioner, relying on the decision in the case of Manmohan Modi, another assessed of the same group, determined the fair rental value as was fixed by the prescribed authority under the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. Being aggrieved, the Revenue carried the matter in further appeal to the Tribunal but without any success. While dismissing the appeal, the Tribunal again relied on its earlier decision in the case of M. K. Modi, While upholding the Appellate Assistant Commissioner's order, the Tribunal observed that no material had been placed before it to show that the facts and the circumstances in the case of the assessed were in any way different from that of the aforementioned case.

4. A similar issue came up for consideration of this court in Commissioner of Income Tax Vs. M.K. Modi, , wherein it was held that for determination of the market value of the perquisite provided to the assessed by way of rent-free accommodation, 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.

5. It is vehemently submitted by Mr. Pandey, learned senior standing counsel for the Revenue, that while deciding the issue in favor of the assessed, the Tribunal has failed to notice a very material fact that there was no Municipal Committee in the city of Modi Nagar and, Therefore, the basis for determining the fair rental value for the accommodation provided to the assessed in terms of Rule 3, had to be on the basis of the local enquiries for similar properties in the locality. We are afraid, no such plea having been raised by the Revenue before the Tribunal, in a reference, we cannot permit the Revenue to raise a new plea.

6. Accordingly, following the decision of this court in the case of Commissioner of Income Tax Vs. M.K. Modi, , we answer the first question in the affirmative, i.e, in favor of the assessed and against the Revenue.

7. The second issue also pertains to the computation of the value of perquisite in respect of the free water and electricity provided by the employer to the assessed. The Appellate Assistant Commissioner as also the Tribunal fixed the value of the said perquisite at Rs. 1,000, by relying on its earlier order pertaining to the assessment year 1973-74 in the case of Sudhir Kumar Modi, another assessed of the same group.

8. As noted above, while deciding the issue, the Tribunal has merely placed reliance on its earlier order in the case of Sudhir Kumar Modi. It is pointed out by Mr. S. K. Agarwal, learned counsel for the assessed, that in the reference filed by the Revenue against the order of the Tribunal in I. T. A. No. 5271/ Delhi of

1977-78, in respect of the assessment year 1973-74, on which reliance has been placed by the Tribunal, the issue with regard to the computation of value of perquisite for free water and electricity, does not form part of the reference made to this court. Be that as it may, we find that the Tribunal's order in the case of Sudhir Kumar Modi, which forms part of the statement of the case, the Tribunal has simply affirmed the finding recorded by the Appellate Assistant Commissioner in this regard but somehow, the order of the Appellate Assistant Commissioner has not been made a part of the statement of the case, with the result, we are unable to appreciate the reasons which weighed with both the appellate authorities below to decide the issue in favor of the assessed.

Under the circumstances, we return the second question unanswered.

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