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(1982) 04 MP CK 0025

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 157 of 1980

Commissioner of Income Tax — APPELLANT

Vs

Manager, Madhya Pradesh State Co-operative Development Bank Ltd. — RESPONDENT

Date of Decision : 01-04-1982

Acts Referred:
Income Tax Act, 1961 — Section 192, 201

Citation : (1982) 187 ITR 230

Hon'ble Judges : K.N. Shukla, J;G.G.Sohani, J

Bench : Division Bench

Advocate : R.C. Mukati, for the Appellant; A.K. Chitale, for the Respondent

Judgement

Shukla, J.—This is a reference u/s 256(1) of the I.T. Act, 1961.

2. Facts as stated by the Tribunal are as follows :

In compliance with the provisions of Section 206. of the I.T. Act the Manager, Madhya Pradesh State Co-operative Development Bank Ltd., filed annual return of salary income in respect of its employees showing the amount of tax deductible u/s 192 of the I.T. Act. The ITO (TDS), Bhopal, examined the said return and found that the tax deductible u/s 192 of the Act, was not properly deducted by the above mentioned employer in respect of 23 employees. He found that a number of deductions and allowances were claimed by the employer which were not admissible. The ITO, therefore, re-computed the taxable income in each lease and by a separate order u/s 201 of the Act demanded an extra tax of Rs. 22,800 and interest amounting to Rs. 3,306.

3. The assessee challenged this order before the Commissioner of Income Tax (Appeals) who allowed the appeal, set aside the order of the ITO and directed him to revise the demand of tax short deducted. The department filed a second appeal before the Income Tax Appellate Tribunal. The appeal was dismissed by the Appellate Tribunal holding that in the case where the assessment of an

employee has been completed by the competent ITO and the tax also has been fully recovered on his assessed income, no action against the employer u/s 201 of the Act can be taken in the light of the scheme of Chap. XVII. At the instance of the department the following question has been referred to the High Court for opinion:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that where regular assessment of an employee has been completed and the amount of tax fully paid by him, the ITO, Salaries Circle (TDS), has no jurisdiction u/s 201 of the Act of 1961, to demand further tax from the employer in respect of the tax short deducted relating to such employees ?"

4. Section 4 of the I.T. Act is the charging section which provides that Income Tax should be charged for every assessment year in respect of the total income of the previous year of every person. Sub-section (2) of Section 4 provides that Income Tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of the said Act. The principal liability for payment of Income Tax is, therefore, that of the person who receives income. Chapter XVII of the Act provides for deduction of tax at source. Section 192(1) lays down that any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct Income Tax computed on the basis of the rates in force, on the estimated income of the assessee under this head for that financial year. Section 201(1) of the Act provides that if such person (person responsible for paying salary and deducting tax at source) does not deduct or after deducting fails to pay tax, he will be deemed to be an assessee in default in respect of the tax. In the case under reference it was not the case of the department that the assessee, i. e., the Manager, M.P. State Co-operative Development Bank Ltd., Bhopal, did not deduct tax at source from the salary paid to his employees. The ITO in charge of TDS, however, was not satisfied with the various deductions which were taken into consideration at the time of computing the tax payable at source. Further, as the statement of case shows, the regular assessment of the employees had been completed and the amount of tax was fully paid by them. The ITO, Salaries Circle (TDS), could not, therefore, demand further tax from the employer in respect of the income of the employees, which was the salary of the employees chargeable to tax when the same had been fully paid.

5. We, therefore, hold that the Tribunal was right in taking the view that where the regular assessment of an employee had been completed and the amount of tax fully paid by him, the ITO, Salaries Circle (TDS), had no jurisdiction u/s 201 of the Act to demand further tax from the employer in respect of the tax short deducted relating to such employee. The question is answered in the affirmative and against the department. There will be no order as to costs.

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