(2007) 06 UK CK 0017

In the Uttarakhand High Court

Commissioner of Income Tax APPELLANT

Vs

Michel Garnaud RESPONDENT

Date of Decision : 28-06-2007

Acts Referred:
Income Tax Act, 1961 — Section 256

Citation : (2007) 164 TAXMAN 184

Hon'ble Judges : P.C.Verma, J;B.C.Kandpal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The present Income Tax reference is at the instance of the department u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as ''the Act'') against the consolidated order of the Income Tax Appellate Tribunal dated 28-2-1983, in I.T.A. Nos. 234 to 238 (Delhi) of 1982 for the assessment year 1978-79.

2. The following questions, said to be substantial questions of law, have been referred for the opinion of this Court:

1. Whether, on the facts and in the circumstances of the case the Tribunal was correct in holding that the salary paid to the foreign technicians was neither earned nor accrued in India and, therefore, not taxable in India?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in holding that there is no relationship of employer and employee between BHEL and French technicians and, therefore, perquisites were also not taxable?

3. Whether, on the facts and in the circumstances of the case, the Tribunal is correct that the living allowance is taxable under the head ''Other sources''?

3. After perusal of the record we find that documents mentioned as Annexures A-1 to E, viz., copies of the assessment orders of the five assessees, copy of the consolidated order of the Commissioner (Appeals), copy of the consolidated

order of the Tribunal dated 28-2-1983, copy of the consolidated order (earlier decision) of the IT AT, Delhi Bench ''E'' and copy of the consolidated statement of the case dated 20-12-1982 respectively have not been sent by the ITAT along with the statement of the case. A foot note has been endorsed along with the statement of case which reads as under:

Annexures ''A-1'' to ''E'', mentioned in the Statement of the Case have not been filed by the Commissioner of Income Tax, in spite of the sufficient time and opportunity given. Accordingly under Rule 45 of the Income Tax Appellate Tribunal Rules, the Statement of the Case is forwarded to the High Court without these annexures.

4. In the absence of these material documents, it is impossible for us to give our opinion on the questions of law referred to this Court. Accordingly, the reference application is dismissed without, any answer to the questions of law referred to us.

