(2007) 05 DEL CK 0050

In the Delhi High Court

Case No : ITR No. 170 of 1990

Commissioner of Income Tax — APPELLANT

Vs

Mr. Hans Beer — RESPONDENT

Date of Decision : 17-05-2007

Acts Referred:
Income Tax Act, 1961 — Section 10(14), 256(1)

Citation : (2007) 2 ILR Delhi 637

Hon'ble Judges : Vidya Bhushan Gupta, J;Madan B. Lokur, J

Bench : Division Bench

Advocate : J.R. Goel, for the Appellant; None, for the Respondent

Judgement

Madan B. Lokur, J.—In this reference u/s 256(1) of the Income Tax Act, 1961, the following question of law has been referred for our opinion:

Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the living allowance enjoyed by the assessed is exempt u/s 10(14) of the Income Tax Act, 1961?

2. In Commissioner of Income Tax Vs. Gosline Mario and Others, , one of the questions considered by the Supreme Court was whether the Tribunal was right in law in holding that the payment taken in India in the shape of daily allowance was not exempt from tax u/s 10(14) of the Income Tax Act, 1961.

3. The Supreme Court approved the view taken by the Gauhati High Court in Commissioner of Income Tax v. Goslino Mario [2000] ITR 314, to the effect that u/s 10(14) of the Act any special allowance specifically granted to meet expenses wholly, necessarily and exclusively incurred for the purpose of the duties of office or employment is exempt from tax to the extent such expenses are actually incurred for that purpose.

4. The Gauhati High Court had referred to several decisions and concluded, affirming the view taken in Commissioner of Income Tax, Gujarat-III Vs. Nathalal

Dahyabhai, and Commissioner of Income Tax Vs. J. Jenkin Thomas and Others, , that if the amount paid be a kind of reimbursement for an expenditure incurred for the performance of the duties of the assessed, the same would not be liable to be taxed as salary. In those cases, as well as in the present case, the assessed were foreign technicians and were required to stay away from their homes and consequently the daily allowance given to them was related to the extra expenditure that they were required to undertake on food etc. which was wholly, necessarily and exclusively for the purpose of the duties, and as such it was in the nature of reimbursement which would be excluded from the net cast by the Act.

5. In view of the above, we answer the question referred to us in the affirmative, in favor of the assessed and against the Revenue.

