(2001) 05 DEL CK 0020

In the Delhi High Court

Case No : ITR 40/89

Commissioner of Income Tax APPELLANT

Vs

M/s. Orissa Cement Ltd. RESPONDENT

Date of Decision : 14-05-2001

Acts Referred:

Companies Act, 1956 — Section 30(2)
Income Tax Act, 1961 — Section 256(1), 40(C)

Citation : (2001) 5 AD 432 : (2001) 93 DLT 245 : (2001) 59 DRJ 641 : (2001) 118 TAXMAN 449

Hon'ble Judges : Dr. Arijit Pasayat, C.J;D.K. Jain, J

Bench : Division Bench

Advocate : Mr. R.D. Jolly, for the Appellant;

Judgement

Arijit Pasayat, C.J.—Heard. At the instance of Revenue, following question has been referred for opinion of this Court u/s 256(1) of the Income Tax Act, 1961 (in short, the Act) by the Income Tax Appellate Tribunal Delhi Bench "B" (in short, the Tribunal)"

s "Whether ITAT was correct in law and on facts in holding that payment of sitting fee to Directors could not be considered in computing disallowance u/s 40(C) of the Income Tax Act, 1961?

Dispute relates to the assessment year 1978-79.

2. Brief reference to the factual aspect would suffice. assessed a public limited company, filed its return of income under the Act. During the assessment year, the assessing officer noticed, certain payment had been made to the Directors as sitting fees. He was of the view that payment attracted Section 40(c) of the Act, and made additions accordingly assessed preferred appeal before the Commissioner of Income Tax Appeals (in short, CITA). The said authority upheld the addition. The matter was carried in appeal before the Tribunal. Stand of the assessed was that Section 40(c) refers to remuneration and payment made as

sitting fee for attending the Board of Directors'' meeting and it cannot be termed to be a remuneration, Tribunal accepted the stand and directed deletion. The Tribunal found that Section 40(c) has no application as it was applicable to payment of remuneration and amenities to the Directors. Sitting fees according to the Tribunal cannot be said to belong to the aforesaid category and it was in the nature of daily allowance. On being moved, the question has been referred for opinion of this Court.

3. According to the learned counsel for the Revenue true concepts of Section 40(c) have not been appreciated by the Tribunal. There is no appearance on behalf of the assessed when the matter was called. It is to be noted that there is not dispute to the aspect that payments wee made to the Directors for service rendered by them. Section 30(2) of the Companies Act deal with the aspect of remuneration to Directors. It is provided that Director may receive remuneration by way of fee for each meeting of the Board attended by him. Remuneration is a return for the services rendered. It is reward to a person or payment for services rendered. It was observed by the Gujrat High Court in Alembic Glass Industries Ltd. Vs. Commissioner of Income Tax, that remuneration includes money paid to a person for his services or work. In Queens vs. Postmaster General [18976] 1QBD 658, it was held that remuneration is a wider terms and means a quid pro quo. If a man gives his services, whatever consideration he get for giving his services seems to be a remuneration for him. Remuneration, in our opinion, would include all that is quantifiable in money and paid to a person for his services or work. Similar view has been expressed by the Madras High Court in Rane (Madras) Ltd. Vs. Commissioner of Income Tax, .

4. There is no dispute about the fact that the fees which were paid as directors'' fees or board meetings, fees were in respect of the services rendered by the directors in their capacity as directors. It is, clear to us that such fees would fall within the meaning of the word remuneration u/s 40(c)(i) of the said Act and the Tribunal was, Therefore, right in holding that the directors fees and the board meetings fee paid to the directors by the assessed company were to be included as was done by the Income Tax Officer.

5. In view of the aforesaid position, the sitting fees paid was clearly covered by Section 40(c) of the Act. The question is answered in the negative in favor of the Revenue and against the assessed.