(2001) 01 DEL CK 0090

In the Delhi High Court

Case No : Income-tax Reference No''s. 267 and 268 of 1981

Commissioner of Income Tax APPELLANT

Vs

P. Jaiswal RESPONDENT

Date of Decision : 23-01-2001

Acts Referred:
Income Tax Act, 1961 — Section 17, 17(2), 2(24), 256(1)

Citation : (2001) 252 ITR 453 : (2002) 121 TAXMAN 272

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

Bench : Division Bench

Advocate : R.C. Pandey and Prem Lata Bansal, for the Appellant; Arvind, for the Respondent

Judgement

1. At the instance of the Revenue, the following question has been referred for the opinion of this court u/s 256(1) of the Income Tax Act, 1961 (in short ''the Act"), for the two assessment years, i.e., 1975-76 and 1976-77, by the Income Tax Appellate Tribunal, Delhi Bench "F", New Delhi (in short "the Tribunal") :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the amount of Rs. 36,000 utilised in the purchase of deferred annuity policy by the company for the benefit of the assessed was not liable to be assessed in the hands of the assessed ?"

2. The assessed was the managing director of Jagjit Industries Ltd. and in that capacity he had income- from salary, commission, director''s fee, etc. In addition, he had income from speculation profit from shares and also from dividends and interest. For the assessment years in question a decision was taken that a sum of Rs. 36,000 would be utilised by the company for purchasing a deferred annuity contract from the Life Insurance Corporation of which the benefit will accrue to the assessed on his retirement or in the event of his death to his legal representatives. The question was whether this was a profit in lieu of salary and/ or a perquisite in terms of Section 17(2)(v) of the Act. Though the Commissioner of Income Tax (Appeals) (in short "the CIT (A)"), held that it was to be taxed,

the Tribunal look a different view. On being moved for reference, the question, as set out above, has been referred for the opinion of this court.

3. We have heard learned counsel for the Revenue and learned counsel for the assessed.

4. The effect of insertion of Sub-clauses (iiia) and (iiib) of Section 2(24) with retrospective effect and the nature and ambit of expression "profits in lieu of salary" were examined by the apex court in Karamchari Union, Agra Vs. Union of India and Others, . Keeping in view the principles laid down by the apex court in the said case, the inevitable conclusion is that the Tribunal was not justified in its view. Accordingly, the question referred is answered in the negative, in favor of the Revenue and against the asses-see.

5. References are accordingly disposed of.

