
(1995) 02 RAJ CK 0051
In the Rajasthan High Court
Case No : Income Tax Case No. 32 of 1985

Commissioner of Income Tax

APPELLANT

Vs

Pramod Kumar Jain

RESPONDENT

Date of Decision : 10-02-1995

Acts Referred:

Income Tax Act, 1961 — Section 15, 16

Citation : (1995) 125 CTR 154 : (1995) 216 ITR 598

Hon'ble Judges : Y.R. Meena, J;V.K. Singhal, J

Bench : Division Bench

Advocate : G.S. Bapna, for the Appellant; None, for the Respondent

Judgement

V.K. Singhal, J.—The only controversy which has been raised in the present matter is regarding the interpretation of the provision of Section 16(1) of the Income Tax Act, 1961, as to whether the salary received by the assessee-partner falls to be considered under the head "Income from salaries" and consequently standard deduction is allowable u/s 16(1) of the Income Tax Act, 1961. The Income Tax Officer has rejected the claim of the assessee for standard deduction on the ground that the salary drawn by a partner from the partnership-firm does not qualify for deduction u/s 16(1) of the Income Tax Act. The appellate authority has considered the matter and was of the view that the character of salary received by a partner from a partnership-firm cannot be considered as chargeable under the head "Salaries". In these circumstances, the deduction u/s 16(1) was held not allowable to the assessee. The Income Tax Appellate Tribunal has, however, following its decision in the case of Chhilarmal Goyal allowed the standard deduction. On the request of the Revenue, the following question of law has been referred for the opinion of this court u/s 256(1) of the Income Tax Act, 1961, for 1982-83 ;

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is justified in holding that the salary received by the assessee-partner from Jaipur Printers falls to be considered under the head income from

"Salaries" and consequently, in allowing deduction u/s 1(3(1) of the Income Tax Act, 1961 ?"

2. We have heard the arguments of learned counsel for the Department and have considered over the matter. Section 15 of the Income Tax Act has provided for the income chargeable to Income Tax under the head "Salaries". The provisions of Section 15 of the Act contemplate the jural relationship of employer and the employee. Various tests have been laid down with regard to the nature of the service rendered by a particular person including the existence of the right in the master to supervise and control the work done by the servant and the manner in which the work is to be done by him. In the case of an employment, the existence of a relationship of master and servant has to be established. The servant renders his services under the direct control and superintendence of his master. The control and supervision of the employer is a sine qua non of the relationship between the employer and the employee. In accordance with the provisions of Section 16 of the Act, the deduction is allowable from the income which is chargeable under the head of "Salary". In the case of a partner, the income which is received by way of salary is of the same character as income from business. Even under the law, the firm is not a legal person nor has any legal existence apart from its partners and is merely a compendious name to describe its partners. Though under the Income Tax law, it is a unit of assessment by virtue of the special provisions, but it cannot be considered that the firm is an employer of its partner. The payment of salary to a partner represents a special share of the profits. The matter was considered by the apex court in the case of Commissioner of Income Tax, Madras Vs. R.M. Chidambaram Pillai and Others, and it was held that there cannot be a contract of service, in strict law, between a firm and one of its partners. Payment of salary to a partner represents a special share of the profits. Salary paid to a partner retains the same character of the income of the firm as profit.

3. In Regional Director, Employees' State Insurance Corporation, Trichur Vs. Ramanuja Match Industries, it was held that a partner of a firm is not an employee of the firm.

4. In Champaran Cane Concern v. State of Bihar [1965] 49 ITR 152 it was pointed out by the apex court that in a partnership each partner acts as an agent of the other. The position of a partner qua the firm is thus not that of a master and a servant or employer and employee which concept involves an element of subordination but that of equals. The partnership business belongs to the partners and each of them is an owner thereof.

5. In Kataria Transport Co. Vs. Commissioner of Income Tax, this court has held that the payment of city compensatory allowance by the firm to its partner is hit by Section 40(b).

6. The relationship of employer and employee cannot be said to be existing in a case where a partner is paid a salary in accordance with the terms of the

partnership deed. The deed of partnership cannot be considered to be a contract of employment. It is only a condition which has been stipulated in the deed of partnership, so that the partner may be entitled to receive extra profit by way of salary from the firm. Generally, every partner of a firm is entitled to participate in the business of the firm and where the partner himself supervises and controls the business, he cannot be considered as an employee of himself.

7. The Tribunal has referred to the decision in the case of Commissioner of Agricultural Income Tax Vs. Tipperary Estates Company, but in view of the decision of the apex court in the case of Commissioner of Income Tax, Madras Vs. R.M. Chidambaram Pillai and Others, referred to above, the said decision cannot be considered as laying down the correct law.

8. It may also be observed that Explanation 2 added by the Finance Act, 1992, from April 1, 1993, in Section 15 makes it clear that the salary received by a partner of a firm shall not be regarded as salary but this amendment has been brought on the statute book because of the change of basis of assessment of the firm and the partner under the new scheme.

9. The provisions of Section 40(b) provide that in the case of a partnership firm, any payment of salary, etc., to a partner is not allowable and has been treated as business income of firm.

10. On the basis of the above discussions and the provisions of Section 15 read with Section 16 of the Income Tax Act, we are of the view that the Tribunal was not justified in allowing the standard deduction from salary received by a partner from the firm. Accordingly, we answer the question in favour of Revenue and against the assessee. No order as to costs.