
(1989) 09 CAL CK 0022

In the Calcutta High Court

Case No : Income-tax Reference No. 767 of 1979

Commissioner of Income Tax

APPELLANT

Vs

P.R.S. Oberoi

RESPONDENT

Date of Decision : 18-09-1989

Acts Referred:

Income Tax Act, 1961 — Section 17(2), 2(24), 40A(5)

Citation : (1990) 84 CTR 191 : (1990) 183 ITR 103 : (1990) 52 TAXMAN 267

Hon'ble Judges : Bhagabati Prasad Banerjee, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : A.C. Moitra, for the Appellant;B. Pal and Monisha Seal, for the Respondent

Judgement

Ajit K. Sengupta, J.—In this reference u/s 256(1) of the Income Tax Act, 1961, made at the instance of the Revenue, the following question of law has been referred to this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting Rs. 53,119 and Rs. 80,942 from the total income of the assessee in respect of the assessment years 1973-74 and 1974-75, respectively, on the ground that the provisions of Section 2(24)(iv) of the Income Tax Act, 1961, were not attracted ?"

The facts stated by the Tribunal are as under.

2. The assessee is a director of Messrs. Oberoi Hotels (I.) Pvt. Ltd. He maintained a running account with the said company for a pretty long time. During the assessment years 1973-74 and 1974-75 under consideration, the Income Tax Officer found that the assessee overdraw Rs. 6,62,139 as at the end of the first year under consideration and Rs. 7,47,598 as at the end of the second year under consideration from the said account. He further observed that the said company did not charge any interest on the overdrawn amounts from the assessee. The Income Tax Officer held that the assessee got a benefit from

the aforesaid company in the shape of getting funds without any obligation to pay interest thereon. As the assessee was a director of the aforesaid company, he invoked the provisions of Section 2(24)(iv) of the Income Tax Act, 1961, and calculated a sum of Rs. 53,119 in the first year and Rs. 80,942 in the second year as the value of the aforesaid benefit being interest calculated at 12 per cent. per annum on the overdrawn amounts, He taxed the aforesaid sums under the head "Other sources".

3. The assessee appealed to the Appellate Assistant Commissioner and contended that the action of the Income Tax Officer was not justified. It was urged that the aforesaid company did not allow the assessee to overdraw from interest-bearing funds but only from its own funds. It was further urged that, in view of a resolution dated May 27, 1968, there was a longstanding practice between the assessee and the company not to charge interest on the aforesaid current account by either party. Further, it was urged that the assessee did not derive any positive benefit or amenity and so the provisions of Section 2(24)(iv) did not apply. The Appellate Assistant Commissioner did not agree with the contentions. He agreed with the reasons given by the Income Tax Officer in his order and held that the assessee did enjoy a benefit within the meaning of Section 2(24)(iv) and so he confirmed the assessments.

4. On further appeal, the Income Tax Appellate Tribunal deleted the said addition made by the Income Tax Officer u/s 2(24)(iv) of the said Act. The Tribunal found that the assessee and the company, Messrs. Oberoi Hotels (I) Pvt. Ltd., were bound by a long-standing practice under which neither party paid interest on the amounts due to the other. It was found that there were credit balances on which the assessee never received any interest from the company in the past. In this background, the Tribunal observed that the assessee could not be said to have derived any benefit simply because some amount was overdrawn by him in a particular year. The Tribunal, therefore, held that the Revenue authorities were not justified in bringing to tax the estimated interest on the aforesaid amounts as a benefit within the meaning of Section 2(24)(iv) of the Income Tax Act, 1961.

5. At the hearing before us, Dr. Pal, learned counsel appearing for the assessee, drew our particular attention to the findings of fact recorded by the Tribunal to the effect that there was an arrangement between the assessee and the company not to charge interest on either side by virtue of a resolution of the board of directors in its meeting held on May 27, 1968. By reason of the said arrangement, the assessee was having substantial balances to his credit with the company in the past and on such credit balances, the assessee never received any interest. Even in the beginning of the relevant years under consideration, there was a credit balance in the account of the assessee in the books of the company. It was contended that the company had enjoyed the use of large amounts of the assessee's funds in the earlier years without payment of any interest. Therefore, it could not be said that, by not charging any interest on the amounts overdrawn by the assessee in the relevant years, he has derived any

benefit during the relevant previous years in the form of using the company's funds without paying any interest.

6. Our attention was then invited to the amendment made in Section 17(2) and Section 40A of the Income Tax Act, 1961, by the Taxation Laws (Amendment) Act, 1984. Sub-clause (vi) of Clause (2) of Section 17 of the Income Tax Act, 1961, as inserted by the said Amendment Act of 1984, provides that where the employer has advanced any loan to the employee for the purpose of building a house or purchasing a site or a house and a site or for purchasing a motor car, and either no interest is charged by the employer on the amount of such loan or interest is charged at a rate lower than the rate of interest which the Central Government may, having regard to the rate of interest charged by it from its employees on loans for such purpose granted to them, specify in this behalf by notification in the Official Gazette, an amount calculated on the following basis will be regarded as "perquisite" received by the employee and charged to tax accordingly.

(a) in a case where such loan is advanced without charging any interest, the interest calculated in the prescribed manner on such loan at the rate so specified ;

(b) in a case where such loan is advanced by charging interest at a rate lower than the rate so specified, the difference between the rate of interest, calculated in the prescribed manner on such loan at the rate so specified and the interest charged by the employer.

7. An amendment on similar lines was also made in Section 40A of the said Act to provide that the amount of interest referred to in item (a) or item (b), as the case may be, of Sub-clause (vi) of Section 17(2) of the said Act, shall be regarded as perquisite provided by the assessee to his employee for the purposes of Section 40A(5) of the said Act. These amendments were intended to take effect from April 1, 1985.

8. However, subsequently, the Finance Act, 1985, sought to omit both the aforesaid provisions with effect from the date of their insertion, namely, April 1, 1985. Clause 20 of the Memorandum Explaining the Provisions of the Finance Bill, 1985, stated that, as a measure of relief to salaried taxpayers, the Bill seeks to omit the aforesaid provision with effect from the date of its proposed insertion, namely, April 1, 1985. In consequence thereof, Sub-clause (vi) of Clause (b) in Explanation 2 to Section 40A(5) of the Income Tax Act, which defines the term "perquisite" for the purposes of the said section to include the perquisite value represented by interest-free loans or loans at concessional rates of interest, was also deleted along with the deletion of Sub-clause (vi) of Clause (2) of Section 17 of the said Act.

9. In the light of the aforesaid amendments by the Amendment Act of 1984, and their subsequent deletions in 1985, it was submitted that, if the loan granted to an employee without charging any interest or by charging interest at a

concessional rate amounted to a benefit for the purposes of Section 17(2)(iii) of the Act, there was no need for Parliament to introduce, by the Taxation Laws (Amendment) Act, 1984, the new Sub-clause (vi) in Section 17(2) of the Act. The omission of the said clause by the Finance Act, 1985, with effect from the date of its insertion, namely, April 1, 1985, was also made with a view to give relief to salaried taxpayers. Similarly, it was contended that there was no need for Parliament to initially amend* Section 40A(5) to provide that the amount of interest referred to in item (a) or item (b), as the case may be, in Sub-clause (vi) in Section 17(2) of the Income Tax Act shall be regarded as a "perquisite" provided by the employer to his employee and, thereafter, to omit the aforesaid provision with effect from the date of its insertion by the Finance Act, 1985. It was, therefore, submitted that, without a specific provision which was sought to be introduced by Sub-clause (vi) in Section 17(2) of the Act and also Sub-clause (vi) of Explanation 2(b) to Section 40A(5) of the Act, the grant of loan to the employee without charging any interest did not amount to any perquisite or benefit for the purposes of Section 17(2) and/or Section 40A(5) of the Act.

10. It was further submitted that Section 2(24)(iv), which has been invoked in this case also uses the expression "the value of any benefit or perquisite" which corresponds to the expression "the value of any benefit or amenity" appearing in the definition of "perquisite" as contained in Section 17(2)(iii) of the Income Tax Act, 1961. Section 40A(5), Explanation 2(b), also seeks to include within the expression "perquisite" the value of any benefit or amenity granted or provided free of cost or at a concessional rate to the employee by the assessee. It was, therefore, contended that grant of loan without charging any interest cannot be considered as a "benefit or perquisite" within the meaning of Section 2(24)(iv) of the said Act.

11. Learned counsel appearing for the Revenue, on the other hand, supported the orders of the authorities below and contended that, the assessee was a director of Messrs. Oberoi Hotels (India) Pvt. Ltd. and enjoyed substantial credit facility in the sum of Rs. 6,62,139 in the first year and Rs. 7,47,598 in the second year without paying any interest thereon. This was nothing but a benefit enjoyed by the director and the value of this benefit ought to be included in the total income of the assessee u/s 2(24)(iv) of the said Act.

12. We have considered the rival contentions. The interest-free credit enjoyed by the assessee during the two previous years under consideration is sought to be valued and included in his total income u/s 2(24)(iv) of the said Act. Clause (24) of Section 2 gives an inclusive definition of "income". Under Sub-clause (iv) thereof, the value of any benefit or perquisite, whether convertible into money or not, obtained from a company, either by a director or by a person who has a substantial interest in the company, or by their relatives, is treated as income. The question, therefore, arises whether the enjoyment by the assessee of interest-free credit can be treated as a "benefit or perquisite" within the meaning of Section 2(24)(iv) of the Income Tax Act, 1961. The intention of the Legislature

seems to be very clear that the expressions "benefit" and/or "perquisite" did not include the enjoyment of loan or credit, free of interest or at a concessional rate. This aspect has been recognised by the statute itself and to bring such items in the net of taxation, the law was amended by the Taxation Laws (Amendment) Act, 1984. By this amendment, as already indicated, a new Sub-clause (vi) was inserted in Section 17(2) and, similarly, another Sub-clause (vi) was inserted in Clause (b) of Explanation 2 to Section 40A(5). The effect of these amendments, which were made effective from April 1, 1985, was to ensure treatment and taxation as perquisite of the value of an amount calculated on a particular basis in a case where an employee receives loan for certain prescribed purposes either free of interest or at a rate which was lower than the specified rate. However, subsequently, the Finance Act, 1985, omitted the aforesaid amendments made by the Taxation Laws (Amendment) Act, 1984, with effect from the date of its insertion, namely, April 1, 1985, with a view to provide relief to salaried taxpayers. The very fact that the statute had to be amended at the first instance to bring the said item within the purview of the expression "perquisite" and it later sought to delete the same from the date of its insertion clearly shows that Parliament does not intend to treat interest-free loan or loan at a concessional rate as any benefit or perquisite granted or provided by the lender-company to the director or employee, as the case may be.

13. If the loan granted to an employee without charging any interest or by charging interest at a concessional rate amounts to a benefit for the purposes of Section 17(2)(iii) of the Act, there was no need for Parliament to introduce, by the Taxation Laws (Amendment) Act, 1984, the new Sub-clause (vi) in Section 17(2) of the Act. The subsequent omission of the said sub-clause by the Finance Act of 1985 with effect from the date of its proposed insertion was also made with a view to give relief to salaried taxpayers. It is to be noticed that Explanation 2(b) to Section 40A(5) of the Act defines a perquisite to mean, inter alia, any benefit or amenity granted or provided free of cost or at a concessional rate to the employee by the assessee. If the loan granted to an employee being a director or a person who has a substantial interest in the company or a relative of a director without charging of interest or at a concessional rate of interest constituted any benefit or amenity within the meaning of Section 40A(5), Explanation 2(b)(iii), there was no need for Parliament to introduce the amendment in Explanation 2(b) of Section 40A(5) of the Act by introducing Sub-clause (vi). Sub-clause (vi) which was introduced in Explanation 2(b) of Section 40A(5) of the Act included within the meaning of the expression "perquisite" the amount treated as perquisite u/s 17(2)(vi) which also was introduced by the same Taxation Laws (Amendment) Act, 1984. In other words, a loan granted to an employee who is a director or who has a substantial interest in the company without charging any interest or at a concessional rate of interest did not amount to a benefit or amenity falling within Clause (b)(iii) of Explanation 2 to Section 40A(5) of the Act. The amendment and the immediate deletion thereof manifest clearly the intention of Parliament.

14. It is, therefore, evident that, without a specific provision which was sought to be introduced by Sub-clause (vi) in Section 17(2) of the Act and also Sub-clause (vi) of Explanation 2(b) to Section 40A(5) of the Act, the grant of loan to the employee without charging any interest does not amount to any benefit for the purposes of Section 17(2) of the Act. The omission of Sub-clause (vi) in Section 17(2) and also Sub-clause (vi) of Explanation 2(b) to Section 40A(5) of the Act from the date of its proposed insertion also was to give relief to salaried taxpayers so that granting of loan to an employee without charging any interest would not be treated as benefit for the purposes of Section 17(2) of the Act.

15. Section 17(2) of the Act, by an inclusive definition, sought to include loans given by an employer to its employee for purchase of a building or a site or a site with building or for purchase of a motor car without charging any interest or at a concessional rate, as perquisite. The word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. It is a cardinal rule of interpretation that if, by an inclusive definition, the meaning of the word is to be enlarged, it would receive a strict interpretation. It is also a cardinal rule of construction of a fiscal statute that, even if two views are possible, the view which is favourable to the assessee must be accepted while construing the provisions of a taxing statute. For the reasons aforesaid, the non-charging of interest on the amount overdrawn in the relevant year cannot be treated as a benefit for the purposes of Section 17(2)(iii) of the Act.

16. The question, however, remains as to whether the non-charging of interest will also fall within the purview of Section 2(24)(iv) of the Act. For the purposes of applying Section 2(24)(iv) of the Act, the same test as to what constitutes a benefit or a perquisite has to be applied. If the loan granted to an employee or a director or a person who has a substantial interest in the company without charging any interest or at a concessional rate of interest does not constitute any benefit for the purposes of Explanation 2(b)(iii) to Section 40A(5) or Section 17(2)(iii) of the Act, by the same yardstick, such loan cannot also be construed as benefit or a perquisite for the purposes of Section 2(24)(iv) of the Act.

17. In that view of the matter, we have no hesitation in holding that Section 2(24)(iv) cannot be pressed into service on the facts and in the circumstances of this case. Furthermore, even the findings of fact recorded by the Tribunal go to support the case of the assessee. The Tribunal has clearly recorded that there was nothing on record to show that Oberoi Hotels (India) Pvt. Ltd., the company, borrowed any money for making advances to the assessee and/or paid any interest on the overdrawn amount which, but for such payment, would have been paid by the assessee. In the absence of any finding that the company has paid any interest on the overdrawn amount which, but for such payment, would have been paid by the assessee, the amount cannot be treated as a benefit within the meaning of Section 2(24)(iv) of the Act.

18. The Tribunal has also recorded a finding of fact that there was a clear

arrangement between the assessee and the said company not to charge interest on either side in terms of a resolution of the board of directors and that in the past, the assessee had substantial credit balances with the company on which the company never paid any interest to the assessee. In this background too, it cannot be said that the assessee derived any benefit by not paying any interest on the overdrawn amount in the two years under consideration. Where the company borrows funds on interest for the specific purpose of providing loans to its directors but does not charge interest from them, or where the financial condition of the company is such that utilisation of the funds of the company by its directors in the form of loan without payment of interest to the company will be detrimental to the interest of the company, in such cases, grant of interest-free loan to the directors may be regarded as a benefit provided by the company to its directors.

19. For the reasons aforesaid, we answer the question in this reference in the affirmative and in favour of the assessee.

20. There will be no order as to costs.

Bhagabati Prasad Banerjee, J.

21. I agree.