(2008) 08 DEL CK 0107

In the Delhi High Court

Case No : IT Appeal No. 283 of 2007

Commissioner of Income Tax APPELLANT

Vs

Raghunath Murti RESPONDENT

Date of Decision : 21-08-2008

Acts Referred:

Companies Act, 1956 — Section 23(1), 309(5A), 309(5B)
Income Tax Act, 1961 — Section 15

Citation : (2008) 220 CTR 102 : (2009) 178 TAXMAN 144

Hon'ble Judges : Rajiv Shakdher, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Rashmi Chopra and Shiv Charan Garg, for the Appellant; V.P. Gupta and Basant Kumar, for the Respondent

Judgement

Badar Dunez Ahmed, J.—This appeal is in respect of the asst. yr. 1998-99 and is directed against the order of the Tribunal passed on 23rd June, 2006 in ITA No. 1077/Del/2002.

2. In this appeal, the Revenue seeks to raise the following questions:

(a) Whether the learned Tribunal erred in law and on merits in holding that the sum of Rs. 10,17,112 refunded by the assessee did not constitute salary and thus cannot be taxed ?

(b) Whether in the facts and circumstances of the case the learned Tribunal erred in holding that the ''notional'' interest on interest free deposit received in connection with the letting out of the property cannot be included in the rent received so as to constitute part of the annual letting value of the assessee''s property determined u/s 23(1)(b) of the Act?

3. Insofar as the proposed question (b) above is concerned, there is no dispute that the same stands covered against the Revenue and in favour of the assessee by virtue of the decision of this Court in CIT v. Asian Hotels Ltd. (2008) 215 CTR (Del) 84. Consequently, no question of law survives with regard to the proposed

question (b).

4. With regard to the proposed question (a), the factual background is that the assessee in his original return had declared an income of Rs. 26,81,110. This return was filed on 26th June, 1988. A revised return was filed on 16th Aug., 1999 and the income returned was shown at Rs. 16,64,000. The assessee had revised the returned income because the assessee had refunded a sum of Rs. 10,17,112 to his employer company (M/s Alcatel Modi Network Systems Ltd.). The said amount was refunded because the same was found to be excess amount paid to the assessee by way of remuneration. This resulted in the assessee revising his salary income to Rs. 8,58,217 as against the original returned salary income of Rs. 18,75,329. As per the Revenue, the refund of the said sum of Rs. 10,17,112 cannot be treated as excess salary paid once the same had accrued to the assessee in the relevant year. The AO, consequently, held that the refund of the said amount was not liable to be treated as reduction in the salary retrospectively.

5. In appeal before the CIT(A), the said finding was reversed. The CIT(A) arrived at the conclusion that the assessee had refunded the said amount in view of the legal requirement contained in the Companies Act, 1956 and particularly, the provisions of Sections 309(5A) and 309(5B) r/w Section II of part II of Schedule XIII to the Companies Act, 1956. The CIT(A) also held that the said refund to the assessee''s employer was not voluntary and, therefore, could not be construed as foregoing of salary. He noted that since the salary had been refunded in view of the legal requirements under the Companies Act, 1956, the same could not be held, as the assessee''s income and, therefore, was not assessable. Consequently, the assessee got the relief of Rs. 10,17,112 in respect of the refunded amount.

6. Being aggrieved, the Revenue preferred an appeal before the Tribunal. The Tribunal, by virtue of the impugned order, has accepted the finding returned by the CIT(A) and has rejected the plea raised by the Revenue. The Tribunal noted that the assessee being the managing director of the company (M/s Alcatel Modi Network Systems Ltd.) was entitled to managerial remuneration in accordance with the resolution passed in the AGMs of the shareholders of the company held on 30th Sept., 1996 and 5th May, 1997. It was in the AGM held on 30th Sept., 1996 that the assessee had been appointed as a whole time director for a period of five years w.e.f. 4th Dec, 1995 on the remuneration stated therein. In the AGM held on 5th May, 1997, the assessee was appointed as the managing director w.e.f. 10th April, 1997. The resolution passed in that AGM specifically indicates that where in any financial year, during the tenure of the director, the company has no profits or its profits are inadequate, the remuneration payable to such director, notwithstanding the resolution, would be governed by the limits laid down in Section II of part II of Schedule XIII to the Companies Act, 1956. It is also noted that the company suffered loss in the financial year ended on 31st Dec, 1997 and consequently, the remuneration payable to the assessee came

within the restrictions placed in the Companies Act, 1956 as indicated above. Consequently, the excess remuneration paid earlier to the assessee was required to be refunded to the company and it is in this background that the assessee refunded the amount of Rs. 10,17,112. The said refund is also supported by the certificate of the employer company as also the bank statement of the company for the relevant year. The Tribunal concluded, after noting the provisions of the Companies Act, 1956 as well as the resolutions passed in the AGMs indicated above, that the refund made by the assessee was on account of statutory provisions contained in the Companies Act, 1956. The further conclusion arrived at by the Tribunal was that the amount originally paid to the assessee over and above the limits prescribed in the Companies Act, 1956 could not even be construed as salary so as to fall within the fold of taxation u/s 15 of the IT Act, 1961. The Tribunal confirmed the conclusion of the CIT(A) that the amount of Rs. 10,17,112 was not assessable as an income.

7. We have heard the counsel for the parties and have examined the facts as well as the legal position in detail and we find that the Tribunal has rightly confirmed the finding returned by the CIT(A). Both the said authorities have returned a finding of fact that the refund of Rs. 10,17,112 was neither voluntary nor was it for any extraneous consideration and that the refund was made merely with a-view to comply with the provisions of the Companies Act, 1956.

8. In these circumstances, the view sought to be canvassed by the Revenue cannot be accepted and was rightly rejected by the Tribunal. No substantial question of law arises for our consideration. The appeal is dismissed