(1993) 10 RAJ CK 0046

In the Rajasthan High Court

Case No : Income Tax Reference No. 20 of 1984

Commissioner of Income Tax — APPELLANT

Vs

Rajeshwar Prasad — RESPONDENT

Date of Decision : 08-10-1993

Acts Referred:
Income Tax Act, 1961 — Section 10(13A)

Citation : (1994) 207 ITR 926

Hon'ble Judges : K.C. Agrawal, C.J;V.K. Singhal, J

Bench : Division Bench

Advocate : G.S. Bapna, for the Appellant;

Judgement

V.K. Singhal, J.—The Income Tax Appellate Tribunal has referred the following question of law arising out of its order dated June 24, 1983, in respect of the assessment year 1981-82 u/s 256(1) of the Income Tax Act, 1961 :

"Whether the Appellate Tribunal is right in law in holding that the house rent allowance received by the assessee occupying his own house and not actually paying any rent, is exempt u/s 10(13A) of the Income Tax Act, 1961 ?"

2. The brief facts of the case are that the assessee is a purchase officer with SCI Kota. The assessee claimed the house rent allowance exemption in spite of the fact that he was owning his own house. The Income Tax Officer was of the view that the deduction is not allowable as per Rule 2A of the Income Tax Rules, 1962.

3. The Appellate Assistant Commissioner, following the decision given in the case of Commissioner of Income Tax Vs. Justice S.C. Mittal, allowed the appeal.

4. In the second appeal before the Income Tax Appellate Tribunal by the Income Tax Officer, it was observed that the assessee is entitled to deduction and the following observations of the Punjab and Haryana High Court were reproduced in the order that (at page 506 of 121 ITR) "the main object of enacting the provision appears to be that in case an assessee actually suffers monetary loss

by way of expenditure or otherwise in respect of residential accommodation occupied by him and if he is compensated by his employer in that case, subject to the limitations imposed under the Act and the Rules, the allowance paid to him by the employer shall be exempt from Income Tax. Then the court added that an assessee, who occupies his own house, has disentitled himself from the rent which he would have been entitled to if he had not occupied the same himself, and in that sense, he suffered expenditure in that regard. In that sense, an assessee occupying his own house, if compensated by the employer by payment of a special allowance, the compensation paid to the assessee by his employer cannot be subjected to tax".

5. The submission of learned counsel for the Revenue is that the Explanation to Section 10(13A) has completely been ignored by the Income Tax Appellate Tribunal. The said section reads as under :

"10. (13A) Any special allowance specifically granted to an assessee by his employer to meet expenditure actually incurred on payment of rent (by whatever name called) in respect of residential accommodation occupied by the assessee, to such extent ... as may be prescribed having regard to the area or place in which such accommodation is situate and other relevant considerations.

Explanation.--For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply in a case where-

(a) the residential accommodation occupied by the assessee is owned by him ; or

(b) the assessee has not actually incurred expenditure on payment of rent (by whatever name called) in respect of the residential accommodation occupied by him."

6. The above clause was inserted by Act No. 31 of 1964 with effect from October 6, 1964, and the Explanation was inserted by the Taxation Law (Amendment) Act, 1984, with retrospective effect from April 1, 1976. The year in dispute in the present case is 1981-82 and, therefore, the Explanation is clearly applicable. The residential accommodation occupied by the assessee was owned by him and, therefore, he was not entitled to claim the deduction. The specific allowance granted by the employer is to meet expenditure actually incurred on payment of rent in respect of residential accommodation occupied by the employee which is not the case here. It may also be observed that the view of the Punjab and Haryana High Court has been dissented from by the Delhi, Karnataka and Andhra Pradesh High Courts in All India Lakshmi Commercial Bank Officers'' Union v. Union of India [1984] 150 1TR 1 Patil Vijaykumar and Others Vs. Union of India and Another, and M. Krishna Murthy and Others Vs. Commissioner of Income Tax, Andhra Pradesh, Hyderabad and Others, respectively. In any case, since the view of the Punjab and Haryana High Court has also been superseded by retrospective amendment by Act No. 67 of 1984, we are of the view that the Income Tax Appellate Tribunal was not justified in holding that the house rent allowance received by the assessee occupying his own house and not actually

paying any rent, is exempt u/s 10(13A) of the Income Tax Act, 1961.

7. The reference is accordingly answered in favour of the Revenue and against the assessee.

