(1994) 11 BOM CK 0013

In the Bombay High Court

Case No : Income-tax Reference No. 265 of 1983

Commissioner of Income Tax APPELLANT

Vs

Rohit J. Patel RESPONDENT

Date of Decision : 10-11-1994

Acts Referred:
Income Tax Act, 1961 — Section 16

Citation : (1995) 123 CTR 413 : (1995) 211 ITR 250 : (1995) 79 TAXMAN 443

Hon'ble Judges : S.M. Jhunjhunwala, J;B.P. Saraf, J

Bench : Division Bench

Advocate : Dr. V. Balasubramaniam, for the Appellant;

Judgement

Dr. B.P. Saraf, J.—At the instance of the Revenue, the following question of law has been referred for the opinion of this court by the Income Tax Appellate Tribunal u/s 256(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case and having regard to the provisions of section 16(i)(a) and (b) of the Income Tax Act, 1961, the Tribunal was justified in law in holding that the assessee was entitled to the deduction from salary derived by him from each of his two employment individually in the year under consideration?"

2. This reference pertains to the assessment year 1975-76.

3. The assessee is an individual who was getting salary income from two concerns, viz., Messrs. Vijay Flexible Containers and Messrs. Pranav Trading Company. He claimed standard deduction u/s 16(i) of the Income Tax Act, 1961 ("the Act"), from each of the two employers at Rs. 3,500 each. The Income Tax Officer allowed only one deduction of Rs. 3,500. The assessee appealed to the Commissioner of Income Tax (Appeals), who accepted the contention of the assessee that he was eligible for the standard deduction u/s 16(i) in respect of each of the two employments. He, therefore, allowed the assessee''s claim for additional deduction of Rs. 3,500. The appeal of the Revenue against the order of

the Commissioner of Income Tax (Appeals) was rejected by the Tribunal. Hence this reference.

4. Section 16(i) of the Income Tax Act, 1961, as it stood at the material time, so far as is relevant, reads :

"16. Deductions from salaries. - The income chargeable under the head ''Salaries'' shall be computed after making the following deductions, namely :-

(i) in respect of expenditure incidental to the employment of the assessee, a sum calculated on the basis provided hereunder, namely :-

5. Section 16(i) thus grants a deduction on graded scale, calculated with reference to the amount of salary derived by the assessee, in respect of expenditure incidental to the employment. This deduction is, however, subject to the maximum of Rs. 3,500.

6. In the course of computation of deduction under the above provision, a controversy arose whether the deduction was to be computed with reference to the aggregate amount of salary derived by the assessee or separately with respect to the amount of salary received from each employer. In other words, whether the maximum monetary ceiling would be applicable to the deduction u/s 16(i) in respect of the aggregate salary or it will apply to deduction in respect of salary received from each employer. This controversy, however, has now been set at rest by the insertion of the following Explanation in section 16(i) of the Act by the Taxation Laws (Amendment) Act, 1984, with retrospective effect from April 1, 1975 :

"Explanation. - for the removal of doubts, it is hereby declared that where, in the case of an assessee, salary is due from, or paid or allowed by, more than one employer, the deduction under this clause shall be computed with reference to the aggregate salary due, paid or allowed to the assessee and shall in no case exceed the amount specified under this clause."

7. This Explanation was inserted to clarify, for the removal of doubts, that where in the case of an assessee, salary is due from more than one employer, the deduction admissible under clause (i) of section 16 shall be computed with reference to the aggregate amount of salary due to the assessee and such deduction shall in no case exceed the monetary ceiling specified therein.

8. With the insertion of the above Explanation, the legal position (in regard to assessments for the assessment year 1975-76 and onwards) is absolutely clear and deduction u/s 16(i) of the Act will be computed with reference to the aggregate salary received by the assessee from both the employers and it cannot exceed the amount specified in clause (i), which during the relevant year was Rs. 3,500.

9. In view of the above, the Commissioner of Income Tax (Appeals) was not justified in the present case in holding that the assessee was entitled to a

separate deduction of Rs. 3,500 u/s 16(i) of the Act in respect of the two salary amounts received by him from each employer and allowing deduction of Rs. 7,000 as against the monetary ceiling of Rs. 3,500 specified therein. The Tribunal was equally wrong in confirming the same.

10. The legal position is thus clear that where an assessee derives salary from more than one employer, the deduction u/s 16(i) should be computed with reference to the aggregate salary due to him and such deduction shall in no case exceed the monetary ceiling specified therein.

11. Having regard to the above, we hold that the assessee was entitled to a deduction of Rs. 3,500 only u/s 16(i) of the Act. Accordingly, the question is answered in the negative, i.e., in favour of the Revenue, and against the assessee.

12. Under the facts and circumstances of the case, there shall be no order as to costs.