(2003) 02 DEL CK 0073

In the Delhi High Court

Case No : IT Reference No. 149 of 1985

Commissioner of Income Tax — APPELLANT

Vs

Sudhir Kumar Modi — RESPONDENT

Date of Decision : 06-02-2003

Acts Referred:
Income Tax Act, 1961 — Section 256(1)

Citation : (2003) 130 TAXMAN 268

Hon'ble Judges : Madan B. Lokur, J;D.K. Jain, J

Bench : Division Bench

Advocate : R.C. Pandey, for the Appellant; S.K. Aggarwal, for the Respondent

Judgement

D.K. Jain, J.—At the instance of the Revenue, the income tax Appellate Tribunal, New Delhi ("the Tribunal" for short) has referred u/s 256(1) of the income tax Act, 1961 (for short "the Act") the following question for our opinion : Whether on the facts and in the circumstances of the case, the ITAT was correct in law in determining the value of perquisite for accommodation, furniture, electricity, and water at Rs. 5,784 as against determined by the I.T.C. of Rs. 33,375.

We have heard Mr. R.C. Pandey, learned senior standing counsel for the Revenue and Mr. S.K. Aggarwal, learned counsel for the assessee. 2. Since, in our opinion, answer to the question, stands concluded by the decision of this Court, we deem it unnecessary to state the facts and examine the issue raised all over again.

3. It would suffice to note that in essence the issue relates to the determination of the value of the perquisite in respect of the accommodation, furniture, water and electricity provided by the employer company to the assessee. As regards the issue with respect to accommodation, relying on Rule 3 of the income tax Rules, 1962, the Assessing Officer took the value of the perquisite on account of rent-free accommodation at 10% of the salary paid to the assessee by the company. However, in assessee''s appeal, the Appellate Assistant Commissioner,

relying on the decision in the case of Manmohan Modi, another assessee of the same group, determined the fair rental value as was fixed by the prescribed authority under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. Being aggrieved, the Revenue carried the matter in further appeal to the Tribunal but without any success. While dismissing the appeal, the Tribunal again relied on this earlier decision in the case of Commissioner of Income Tax Vs. M.K. Modi, while upholding the Appellate Commissioner''s order, the Tribunal observed that no material had been placed before it to show that the facts and the circumstances in the case of the assessee were in any way different from that of the aforenoted case.

4. A similar issue came up for consideration of this Court in M.K. Modi''s case (supra), wherein it was held that for determination of the market value of the perquisite provided to the assessee by way of rent-free accommodation, the basis has to be the standard rent fixed by the Rent Controller in respect of similar accommodation by another person u/s 9 of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972.

5. It is vehemently submitted by Mr. Pandey, learned senior standing counsel for the Revenue, that while deciding the issue in favour of the assessee, the Tribunal has failed to notice a very material fact that there was no Municipal Committee in the city of Modi Nagar and, therefore, the basis for determining the fair rental value for the accommodation provided to the assessee in terms of Rule 3, had to be on the basis of the local enquiries for similar properties in the locality. We are afraid, no such plea having been raised by the Revenue before the Tribunal, in a reference, we cannot permit the Revenue to raise a new plea.

6. As regards the issue with respect to furniture, water and electricity, we find that while dismissing revenue''s appeal, the Tribunal has merely relied on its earlier orders in the case of the assessee himself in respect of assessment years 1974-75 and 1976-77. It is conceded at the bar that the view taken by the Tribunal on this issue in respect of earlier years has been affirmed by this Court.

7. In this view of the matter and following the decision of this Court in M.K. Modi''s case (supra), we answer the question in the affirmative, i.e., in favour of the assessee and against the Revenue. The reference stands disposed of in the above terms with no orders as to costs.

