(1996) 07 MAD CK 0070

In the Madras High Court

Case No : Tax Case No''s. 1107 and 1108 of 1984

Commissioner of Income Tax — APPELLANT

Vs

V. Karthikeyan — RESPONDENT

Date of Decision : 25-07-1996

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

Citation : (1999) 239 ITR 815

Hon'ble Judges : N.V. Balasubramanian, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant;

Judgement

Thanikkachalam, J.—At the instance of the Department, the Tribunal referred the following common question for the asst. yrs. 1980-81 and 1981-82 for the opinion of this Court, under s. 256(1) of the IT Act, 1961, hereinafter referred to as ''the Act'' :

"Whether, on the facts and in the circumstances of the case and having regard to the provisions of r. 2A of IT Rules, 1962, the Tribunal is justified in law in holding that the assessee is entitled to exemption under s. 10(13A) of the IT Act, in respect of the house rent allowance received by him?"

2. The point for consideration is that having regard to the provisions of r. 2A of the IT Rules, 1962, the assessee is entitled to exemption under s. 10(13A) of the IT Act, 1961, in respect of the house rent allowance received by the assessee.

3. The assessee is a Government servant and a member of the Indian Administrative Service. During the relevant period, he was functioning as the chairman of the State Planning Commission, Madras. He was in receipt of Rs. 4,200 by way of house rent allowance. The assessee claimed the exemption under s. 10(13A) of the Act in respect of the house rent allowance received by him. The claim was rejected by the ITO on the ground that the claim of exemption under s. 10(13A) of the Act is subject to r. 2A of the IT Rules. Under r.

2A of the IT Rules, the exemption available under s. 10(13A) should be allowed in cases of persons, who have incurred certain expenditure by way of payment of house rent. It was found that the assessee was residing in his own house and did not incur any expenditure as and by way of house rent. On appeal, the AAC, following the decision of the Punjab & Haryana High Court in the case of Commissioner of Income Tax Vs. Justice S.C. Mittal, allowed the claim for exemption for the full amount. While allowing the claim for exemption, the AAC has not restricted the amount eligible for exemption up to the limits prescribed under r. 2A of the IT Rules, 1962, subject to which the exemption under s. 10(13A) is to be allowed. On further appeal, following the decision of the Punjab & Haryana High Court cited supra, the Tribunal upheld the view taken by the AAC.

4. A similar question came up for consideration before the Rajasthan High Court in Commissioner of Income Tax Vs. Rajeshwar Prasad, wherein the Rajasthan High Court held that the house rent allowance received by an assessee, occupying his own house and not actually paying rent, is not exempt from tax under s. 10(13A) of the IT Act, 1961.

A similar view was also taken by the Andhra Pradesh High Court in Commissioner of Income Tax Vs. M. Satyanarayana Sastry, . In view of the decisions rendered by the Andhra Pradesh and Rajasthan High Courts, we are of the opinion that the house rent allowance payable to the assessee while the assessee is residing in his own house cannot be allowed as a deduction, since the house rent paid would form part of the salary. Accordingly, we answer the question referred to us in the negative and in favour of the Department. No costs.