(1999) 07 BOM CK 0023

In the Bombay High Court

Case No : IT Reference No. 600 of 1987 20 July 1999 A.Y. 1978-79

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

VAS, J. N. — RESPONDENT

Date of Decision : 20-07-1999

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

Citation : (2000) 106 TAXMAN 658

Hon'ble Judges : Smt. Ranjana Desai, J;Ranjana Desai, J;Dr. B. P. Saraf, J;B. P. Saraf, J

Bench : Full Bench

Advocate : R.V. Desai and P.S. Jetly, for the Revenue None, for the Assessee, for the Appellant;

Judgement

Desai, J.

By this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as ''the Act''), the Tribunal has referred the following question of law to this court for opinion at the instance of the revenue:

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the amount of Rs. 24,000 paid by the employer, Radiant Electric Machinery Co., for the purchase of single premium annuity policy on the life of the assessee cannot be regarded as a perquisite within the meaning of section 17(2) of the Income Tax Act, 1961 and, consequently, cannot be included in the assessee''s income under the head ''Salaries''?

2. The facts which are relevant for the purposes of this reference may be summed up as follows: The assessee was an employee of Radiant Electric Machinery. He retired from the employment of the said company on 31-3-1976. On 1-4-1976, the assessee entered into an agreement with the said company under which he was appointed as a Technical Consultant to the said company.

Under the said agreement, the assessee was to act as consultant in consideration of the annuity of Rs. 50,000 to be taken out by the said company in favour of the assessee. He was also entitled to monthly consultation fee of Rs. 600. The relevant paragraphs of the said agreement read as under:

Now therefore this agreement witnesses that in consideration of the annuity of Rs. 50,000 (Rupees fifty thousand only) to be taken out by the Firm in favour of the said Technical Consultant and further payment of Rs. 600 as consultation fee per month and the Technical Consultant agreeing to act as consultant to the said firm on the conditions hereinafter appearing:

(1) That the firm shall take out the annuity of Rs. 50,000 (Rupees fifty thousand only) and pay the premium for taking the annuity to be made payable to the consultant from 1-4-1979 and also pay monthly consultation fee of Rs. 600 (six hundred only).

For the two accounting years, first ending on 31-3-1977 and the second on 31-3-1978, the assessee acted as a Technical Consultant to the said company. In accordance with the agreement dated 1-4-1976, the said company purchased from the Life Insurance Corporation of India single premium annuity policy on 1-3-1977. Under this policy, the single premium amount of Rs. 24,000 was paid by the said company. The annuity was to vest in the assessee on 1-3-1981 and it was to cease on the expiry of five years from the date on which the annuity vested in the assessee.

It was specifically provided that the policy would not be surrendered at anytime and further annuity payment would not be commuted for realisation. There was a special provision to the effect that in case the annuitant dies before the date on which the annuity vested in him, the amount due under the policy was to be payable, if any, to the annuitant''s wife, Smt. Maria Vas. It was also provided that if before the date of vesting, the annuitant''s wife predeceases him and the annuitant dies before the date of annuity, the amount was payable to the executors or administrators or other legal representatives of the annuitant.

On 22-3-1978, the said company took another policy which was to vest in the assessee on 28-10-1983. Under this policy also single premium of Rs. 24,000 was payable. The conditions of this policy were similar to the earlier policy.

3. In his return for the assessment year 1977-78, the assessee disclosed the salary receipt of Rs. 7,200. The Income Tax Officer included the amount of Rs. 24,000 paid as premium by the said company to the Life Insurance Corporation of India in terms of the single premium policy taken out by the said company in favour of the assessee in the salary income of the assessee. Similarly, for the assessment year 1978-79, the Income Tax Officer included the amount of Rs. 24,000 in the salary income of the assessee.

4. Appeals were preferred by the assessee to the Commissioner (Appeals). The Commissioner (Appeals) by his order dated 15-12-1981, confirmed the

assessment for the year 1977-78. So far as the assessment year 1978-79 is concerned, by order dated 31-12-1981, the Commissioner (Appeals) upheld the Income Tax Officer''s conclusion that the said sum of Rs. 24,000 was assessable as income under the head ''Salaries''. Appeal on that count was not allowed, however, it was partly allowed on some other count with which we are not concerned in this reference.

5. The matter was carried to the Tribunal by the assessee. The Tribunal came to a conclusion that in the facts and circumstances of the case premium of the insurance policy paid by the said company was not salary due from the said company to the assessee nor was it a salary paid or allowed to the assessee in the year under consideration and, therefore, cannot be taxed u/s 15 of the Act. It is against this background that the present question of law is referred to this court for its opinion.

6. We have heard at length Mr. R.V. Desai, the learned counsel for the revenue. None appeared for the assessee. Our attention is drawn to the decision of this court in J.H. Doshi Vs. Commissioner of Income Tax, . In that case, the relevant assessment year was 1974-75, for which previous year ended on 1-3-1974. The assessee was the managing director of a company. Under the agreement dated 11 -5-1970 between the assessee and the company, the assessee was appointed as the managing director of the company for a period of five years commencing from 1-1-1970 on a salary of Rs. 72,000 per annum plus commission at the rate of one per cent of the net profits subject to a ceiling of 50 per cent of the approved salary. The terms of the said agreement were modified with mutual consent by a supplemental deed dated 26-4-1971, whereby the salary of the assessee was increased to Rs. 90,000 and limit of maximum commission was raised to Rs. 45,000. On 13-9-1973, the company passed two resolutions. By one of the resolutions it was resolved that the assessee was not entitled to commission or net profit in respect of the financial year 1973 and the subsequent financial year. By another resolution it was resolved that in lieu of commission the company would purchase for the financial year 1973 and subsequent financial year deferred annuity policies from the Life Insurance Corporation of India by making payment to the extent of Rs. 45,000 by way of single premium towards deferred annuities to be payable to the assessee or his legal representatives after his death and no interest other than contingent interest was created in favour of the assessee until the date of the first payment of annuity, i.e., date of retirement or death. The assessee filed his return on 20-6-1974 and claimed that the sum of Rs. 45,000 paid by the company for the purchase of the deferred annuity policy from the Life Insurance Corporation of India on his life was not includible in the computation of his income. The Income Tax Officer held that the amount so paid was an item of perquisite to the assessee and was includible in the computation of the assessee''s income. On appeal, the Appellate Assistant Commissioner held that the amount paid as premium could not be added to the income of the assessee as a perquisite due to him during the year and ordered its deletion. The Tribunal reversed the decision of the Appellate

Assistant Commissioner and, hence, a reference was made to the High Court at the instance of the assessee seeking the High Court''s opinion whether the Tribunal was justified in holding that the single premium paid by the company was includible in the computation of the assessee''s income for the assessment year 1974-75. It was held that the commission payable to the assessee was to be calculated on the net profits at the end of the relevant previous year which ended on 31-3-1974 and, therefore, it cannot be said that the commission had accrued to the assessee prior to 31-3-1974 or that the assessee became entitled to payment thereof prior to 31-3-1974. No benefit in respect of payment of premium made by the company for deferred annuity policy had accrued and/or become due to the assessee during the relevant previous year and, therefore, the said amount could not have been included in the salary of the assessee during the relevant previous year.

7. Our attention is also drawn to the judgment of the Supreme Court in Commissioner of Income Tax, Kerala and Coimbatore Vs. L.W. Russel, , where it is held that the contributions made by an employer to provide deferred annuity benefits to the employees cannot be taxed in the hands of employee unless a vested right therein accrues to the employee.

8. In the case on hand, as per the single premium annuity policy dated 1-3-1977, the annuity was to vest in the assessee on 1-3-1981, and it was to cease on the expiry of five years from the date on which the annuity vested in the assessee. As per the second policy dated 22-3-1978, the annuity was to vest in the assessee on 23-10-1983. Therefore, in the previous year ending on 31-3-1977 and 31-3-1978, the amount of premium paid towards single premium insurance policy did not vest in the assessee. At best he had a contingent right therein. In our opinion, the above-quoted judgments clearly cover the facts of this case and, hence, the said amount cannot be included in the salary income of the assessee for the assessment years 1977-78 and 1978-79.

9. In the circumstances. the question referred to us is answered in the affirmative, i.e., in favour of the assessee and against the revenue. Reference disposed of accordingly.