(1976) 09 MAD CK 0014

In the Madras High Court

Case No : Tax Case No. 426 of 1971 (Reference No. 141 of 1971)

Commissioner of Income Tax APPELLANT

Vs

V.R. Rajaratnam RESPONDENT

Date of Decision : 22-09-1976

Acts Referred:
Income Tax Act, 1961 — Section 15

Citation : (1979) 119 ITR 89

Hon'ble Judges : V. Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; S. Padmanabhan and S.V. Subramaniam, for the Respondent

Judgement

Sethuraman, J.—The Income Tax Appellate Tribunal, Madras Bench, has u/s 256(1) of the I.T. Act, 1961, referred the following question

of law for the opinion of this court:

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the amount of income from

salary which accrued to the assessee was not more than Rs. 11,500 and Rs. 7,500 in assessment years 1965-66 and 1966-67, respectively?

2. The assessee was the managing director of M/s. Tube Agencies (P.) Ltd. Under a resolution dated January 22, 1961, he was appointed as the

managing director on a remuneration of Rs. 2,000 per month with effect from January 1, 1961, for a period of three years. On December 27,

1963, when the original period covered by the resolution was about to come to a close, another resolution was passed reappointing him as the

managing director for a further period of three years with effect from January 1, 1964, with a pay of Rs. 2,000 per month and such bonus as the directors might from time to time declare or sanction to him. The assessee was being paid remuneration at the rate of Rs. 2,000 per month up to

May, 1964. He was paid a sum of Rs. 6,000 at the rate of Rs. 2,000 per month for the months of June, July and August, 1964, in the month of

March, 1965. He did not draw any pay at all referable to the months of September to December, 1964. On April 30, 1965, there was a

resolution of the company in which it was noted that the managing director had waived the remuneration payable to him for the months of

September, October, November and December, 1964. The company''s accounts were being closed at the end of the calendar year, and in the

accounts for the calendar year 1965, a sum of Rs. 1,500 was provided as salary payable to the assessee for the months of January to March,

1965, at the rate of Rs. 500 per month. He was actually paid this sum of Rs. 1,500 on July 1, 1966. Meanwhile, on May 27, 1966, the board of

directors passed the following resolution :

The managing director''s salary Rs. 6,000. The managing director is entitled to a remuneration of Rs. 2,000 a month. In view of the financial

position of the company, he has agreed to draw Rs. 500 per month for a period of twelve months. The directors resolved to ratify the payments of

Rs. 6,000 as remuneration to the managing director.

3. On February 24, 1967, a further resolution was passed as follows:

Resolved to reappoint Sri V. R. Rajarathnam as managing director of the company for a further period of five years with effect from January 1,

1966, on a monthly remuneration of Rs. 1,000 plus other expenses like electricity charges, telephone charges and conveyance, etc.

4. We are concerned in the present reference with the assessment years 1965-66 and 1966-67. In the assessment year 1965-66, the relevant

accounting year ended on March 31, 1965. The assessee claimed in this assessment year that he was assessable on the salary of Rs. 2,000 per

month for the months of April to August, 1964, and that he was liable to be assessed only on a sum of Rs. 1,500 being the salary at the rate of Rs.

500 per month for the months of January, February and March, 1965, he having waived the salary for the months of September to December,

1964. Thus, the amount offered for assessment was Rs. 11,500. The ITO assessed him on a sum of Rs. 24,000 at the rate of Rs. 2,000 per month for the whole year. In the assessment year 1966-67, the assessee claimed that he was assessable only on a sum of Rs. 7,500 representing a sum of

Rs. 4,500 for the period April to December, 1965, at the rate of Rs. 500 per mensem and a sum of Rs. 3,000 relating to the three months from

January to March, 1966. The ITO, however, assessed him in that assessment year at the rate of Rs. 2,000 per month, namely, Rs. 24,000, for the

whole year. The assessments were contested on appeal before the AAC, who dismissed the appeal. On further appeal by the assessee, the

Tribunal held that the debt which the company owed to the assessee after August, 1964, was equal to the reduced amounts paid to the assessee

and not a sum of Rs. 2,000 per month. The Tribunal, therefore, accepted the assessee''s case that he was assessable only for Rs. 11,500 for the

assessment year 1965-66 and Rs. 7,500 for the assessment year 1966-67 as regards his salary income. The CIT has challenged this decision of

the Tribunal in the form of the question set out already.

5. Section 15 of the I.T. Act, 1961, provides for the assessment of salary from an employer. The provision so far as it is relevant is as follows :

15. The following income shall be chargeable to Income Tax under the head '' Salaries ''-

(a) any salary due from an employer or a former employer to an assessee in the previous year, whether paid or not;...

6. The question that has to be considered is as to what is the amount that is due to the assessee for the years under reference. The resolution which

governs the payment of salary to the assessee was the one dated December 27, 1963. Subsequently, there was a resolution dated April 30, 1965.

But that resolution merely noted that the managing director had waived remuneration payable to him for the months of September, October,

November and December, 1964. There is nothing in the resolution or anywhere else to show that there was any understanding arrived at between

the managing director and the company before the accrual of the remuneration payable to him. The resolution dated April 30, 1965, is itself after

the relevant year. The learned counsel for the assessee was not in a position to show that there was any correspondence between the assessee and

the company which would evidence any arrangement between them regarding the variation of the resolution dated December 27, 1963. It would, therefore, follow that the assessee was entitled to the remuneration at the rate of Rs. 2,000 per month. But he unilaterally waived it wholly for the

months of September, October, November and December, 1964, and partly for the months of January to March, 1965.

7. Subsequent to March, 1965, which is relevant for the assessment year 1966-67, there was no resolution during the year ended March, 1966.

The resolution which was passed on May 27, 1966, was after the relevant year, that is, after the accrual of the remuneration at the rate of Rs.

2,000 per month. The resolution dated May 27, 1966, which we have already extracted itself shows, that the managing director was entitled to a

remuneration of Rs. 2,000 per month and that, only in view of the financial position of the company, he had agreed to draw a sum of Rs. 500 per

month for a period of twelve months. As to when that twelve month period commenced is also not clear from the resolution. In these

circumstances, in the absence of any arrangement between the assessee and the company, at any rate during the relevant year, it follows that the

amount that was due to the assessee was at the rate of Rs. 2,000 per month, and his drawal of a lesser amount would only constitute a unilateral

act of waiver of the balance of the remuneration to which he was entitled. That, in such circumstances, the assessee is liable to be taxed on the

amount to which he was entitled, is clear from two decisions of this court. The first case is K. R. Kothandaraman v. CIT [1966] 62 ITR 348 . The

second one is Commissioner of Income Tax Vs. P. Nataraja Sastri, to which one of us was a party. In these two cases, it has been held that the

waiver of the amount due to the assessee would only be an application of the income of the assessee. As the income of the assessee had accrued,

he was liable to be taxed whatever he may have done in the form of waiver of a part of the income. It would follow that the question that is

referred to us has, therefore, to be answered in the negative and against the assessee and we do so accordingly. There will be no order as to costs.

