(2005) 03 AHC CK 0292

In the Allahabad High Court

Case No : IT Reference No. 210 of 1992

Commissioner of Income Tax APPELLANT

Vs

W.F. Bogards RESPONDENT

Date of Decision : 03-03-2005

Acts Referred:
Income Tax Act, 1961 — Section 10(14), 256(1), 56

Citation : (2006) 153 TAXMAN 586

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Division Bench

Advocate : A.N. Mahajan, for the Appellant; M.K. Goyal, for the Respondent

Final Decision : Allowed

Judgement

1. The income tax Appellate Tribunal, Allahabad, has referred the following two questions of law u/s 256(1) of the income tax Act, 1961 (hereinafter referred to as the Act) for opinion to this Court :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the living allowance was a special allowance liable to be exempt u/s 10(14) of the income tax Act?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that living allowance was not income liable to tax u/s 56 as income from other sources ?

The reference relates to the assessment years 1978-79 and 1979-80.

2. Briefly, stated the facts giving rise to the present reference are as follows:-

M/s. Indian Farmers Fertilizers Co-operation Limited (hereinafter called ''IFFCO'') Phulpur, Allahabad, entered into an agreement dated 23-3-1976 with M/s. Killogg India Limited, USA (hereinafter referred as ''KIL'') . The agreement was made for providing certain advisory services in India for construction, erection and procurement of equipment for Ammonia Plant at Phulpur in Allahabad District. As per agreement, Mr. W.F. Bogards and others came to India and rendered services to IFFCO for the period 25-3-1977 to 27-8-1979.

3. According to article 4.02 of the agreement dated 23-3-1976, IFFCO agreed to pay KIL for the services of KIL expatriate personnels per diem rates as prescribed in the agreement. Thereafter, expatriate personnels were paid their salary in U.S.A. by KIL. However, according to article 4.03 of the agreement, IFFCO was to pay living allowance directly to the personnels. According to the same article, other benefits of furnished accommodation, conveyance, water, electricity, gas, etc., were also to be provided by the IFFCO. The Assessing Officer held this benefit extended to the expatriate personnels as income from other sources u/s 56 of the income tax Act, as the same was not paid by the employer.

4. Feeling aggrieved the respondent preferred an appeal before the Commissioner of income tax (Appeals) , who had allowed the appeal and excluded the amounts in question from the income of the respondent for the year under reference, which has been upheld by the Tribunal.

5. We have heard Sri A.N. Mahajan, learned Standing Counsel for the revenue. Sri M.K. Goyal has filed his appearance on behalf of the respondent/assessee.

6. We find that this Court in CIT v. R.T. Lawrence [IT Reference No. 59 of 1986, dated 10-11-2004], had considered the similar questions being question Nos. 4 and 5 therein and had answered the same against the department and in favour of the assessee. For the reasons given in R.T. Lawrence''s case (supra) , with which we respectfully agree, we answer the aforesaid questions referred to us in the affirmative, i.e., in favour of the assessee and against the revenue. There shall be no order as to costs.