(1979) 12 DEL CK 0030

In the Delhi High Court

Case No : Income-tax Reference No. 1 of 1970

Ishwar Dass APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 11-12-1979

Acts Referred:

Citation : (1980) 17 CTR 188 : (1980) 123 ITR 379

Hon'ble Judges : S. Ranganathan, J;D.R. Khanna, J

Bench : Division Bench

Advocate : L.C. Goel, for the Appellant; M.L. Verma, for the Respondent

Judgement

D.R. Khanna. J.

1. The facts giving rise to this reference lie in a narrow compass. Ishwar Dass, assessed, has been assessed in the status of an individual. He was appointed as managing director of the Sealand (India) Pvt. Ltd. by a resolution of the shareholders of the company in January, 1954, for a period of 10 years. In this capacity he was allowed salary of Rs. 350 per month plus certain percentage of profits.

2. Subsequently, by a resolution passed in December, 1961, his services as managing director were terminated by the end of December, 1961. Ishwar Dass claimed that thereby he was put to loss as he would have, in the normal circumstances under the original resolution, continued to remain in service up to the month of January, 1964. The board of directors, Therefore, considering his submission allowed him a consolidated amount of Rs. 15,200 by way of compensation for the estimated loss due to his premature retirement. He was also allowed an amount of Rs. 6,300 as salary for the period from April 1, 1960, to the end of December, 1961.

3. For the assessment year 1962-63, Ishwar Dass filed his return disclosing an income of Rs. 6,911 which partly consisted of Rs. 6,300 as salary enjoyed by him. In Section 3 of the return he showed the receipt of Rs. 15,200 representing

the compensation for loss of service. This was claimed to be not taxable.

4. As the assessment proceeded, the ITO took note of the provisions contained in Section 17 of the I.T. Act, 1961 and found that salary included profits in lieu of or in addition to any salary or wages. The term " profits in lieu of salary " was elaborated in Section 17(3)(i) as under :

" The amount of any compensation due to or received by an assessed from his employer or former employer at or in connection with the termination of his employment or the modification of the terms and conditions relating thereto."

5. This provision thus included, within its ambit, the amount of any compensation received by the assessed from his employer in connection with the termination of his employment. The case of the present assessed thus squarely fell within its terms. The ITO, Therefore, treated the amount of Rs. 15,200 as assessable in this year. This decision was upheld in appeals by the AAC and the Appellate Tribunal. The learned Tribunal went into the history of the provisions under the Indian I.T. Act, 1922, corresponding to those in Section 17(3) of 1961 Act. It was held that the provisions contained in the 1961 Act were broad enough to cover payment of the type made to the assessed in the present case.

6. Ishwar Dass, feeling aggrieved, has now obtained the present reference with the following question for opinion of this court:

" Whether, on the facts and in the circumstances of the case the Tribunal was justified in holding that the sum of Rs. 15,200 was rightly taxed as profit in lieu of salary, within the meaning of Section 17(3)(i) of the Income Tax Act, 1961?"

7. It has been sought to be urged that under the 1922 Act, as had existed after the amendment of 1955, the term " profits in lieu of salary " included the words " whether solely as compensation for loss of employment or for any other consideration ". The words, it is pointed out, have not been incorporated in Section 17(3) of the 1961 Act and, Therefore, it should be assumed that the type of payment received by the assessed in the present case is not covered by Section 17(3). Reference has also been made to a decision of the Court of Appeal in Henley v. Murray [1950] 1 All ER 908, wherein it was observed that where a sum was payable in consideration of the abrogation of the taxpayer''s contract of employment and not under his contract of service, it could not be treated as a profit from the taxpayer''s employment in respect of which he was assessable to Income Tax.

8. In our considered opinion, however, this decision does not come to the avail of the present assessed as we are here interpreting specific provisions contained in Section 17(3) of the 1961 Act. This provision, as already set out above, makes it abundantly clear that any amount of compensation received from an employer, in connection with the termination of employment, has to be treated as profits in lieu of salary and, Therefore, assessable as " salary ".

9. At the stage of the hearing of this reference, the assessed sought to make

reference to the provisions contained in Section 28(ii)(a) of the 1961 Act which are to the following effect 1

" (ii) any compensation or other payment due to or received by,--

(a) any person, by whatever name called, managing the whole or substantially the whole of the affairs of an Indian company, at or in connection with the termination of his management or the modification of the terms and conditions relating thereto."

10. It has been pleaded that the present assessed''s case specifically falls under these provisions. He was holding the post of managing director in the company and this provision covers cases of termination of services of such managing directors. These being specific provisions, it is pleaded, should have been applied in this case and not the general provisions as contained in Section 17. Prima facie it appears that there is some force in the contention raised by the assessed. However, we find that no such plea was at all raised at any stage before the I.T. authorities or even before the Appellate Tribunal. The question referred to us by the Tribunal is also confined to the interpretation of the provisions contained in Section 17 of the 1961 Act. We are required to give our opinion on that question. As already noted above, if those provisions are taken into account, the amount of Rs. 15,200 given to the assessed in the present case, had to be treated and assessed as salary income in this year. We, Therefore, answer the question referred in the affirmative. We are unable to allow the new case to be set up at this reference stage by the assessed. In case, however, the law permits the assessed to put forth his claim u/s 28 before any authority, he can do so in accordance with law and let the authority consider the same, accordingly. No order as to cost.