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**(1978) 04 CAL CK 0025**

**In the Calcutta High Court**

**Case No : Income-tax Reference No. 497 of 1975**

Satyanarayan Rungta

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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**Date of Decision : 13-04-1978**

**Acts Referred:**

Companies Act, 1956 — Section 200  
Income Tax Act, 1961 — Section 15

**Citation : (1978) 115 ITR 382**

**Hon'ble Judges : Sudhindra Mohan Guha, J;S.C. Deb, J**

**Bench : Division Bench**

**Advocate : Debi Pal and R.P. Murarka, for the Appellant;Suhas Sen and B.K. Naha, for the Respondent**

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## **Judgement**

Deb, J.—This is a reference u/s 256(1) of the I.T. Act, 1961. The statement of the case relates to the assessment years 1963-64 and 1964-65.

2. The assessee is an individual. He was an employee of a company. In the accounting years relevant to the aforesaid assessment years he received Rs. 23,900 and Rs. 27,667, respectively, as his salary from the company. The company issued certificates showing that his salary was tax-free.

3. The assessee produced the certificates before the ITO in the assessment proceedings. The ITO added the amounts payable as tax on the aforesaid amounts and after allowing certain deductions determined his salary at Rs. 46,857 for the assessment year 1963-64 and Rs. 41,292 for the assessment year 1964-65.

4. The appeals filed by the assessee were dismissed by both the appellate authorities and the following questions were referred by the Tribunal to this court u/s 256(1) of the Act:

"1. Whether, on the facts and in the circumstances of the case and on a proper interpretation of the provisions of Section 200 of the Companies Act, 1956, and

the various provisions of the I.T. Act relating to deduction of tax at source from income under the head "Salaries", the Appellate Tribunal was justified in holding that the salary received by the assessee was rightly grossed up ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that no credit of tax could be given to the assessee for the difference between the salary income taken for the purposes of assessment and the net tax-free salary received by the assessee from his employer ?"

5. Dr. Debi Pal, learned counsel for the assessee, argues before us that the company had no power to agree to pay the tax-free salary to the assessee in view of Section 200 of the Companies Act, 1956, and, therefore, it is an illegal agreement. He also argues that the salary of the assessee cannot be treated as a tax-free salary in view of the illegality of the said agreement. Accordingly, he submits that both the questions should be answered in the negative.

6. But the Income Tax law is not concerned with illegality, if any, tainted with the earning of any income and, therefore, the contentions of Dr. Pal must fail. And in view of the law stated in the cases, namely, (1952) 21 ITR 558 , Tokyo Shibaura Electric Co. Ltd. (By Agents Radio and Electricals Mfg. Co. Ltd., Mysore) Vs. Commissioner of Income Tax, Mysore, , North British Railway Company v. Scott [1923] 8 TC 332, Hartland v. Diggines [1926] 10 TC 247 , Commissioner of Income Tax Vs. C.W. Steel (No. 1), and Commissioner of Income Tax, Madras Vs. I.G. Mackintosh and Another., , cited by Mr. Suhas Sen, learned counsel for the revenue, we answer both the questions in the affirmative and in favour of the revenue.

7. There will be no order as to costs.

Guha, J.

8. I agree.