

Cit Vs. R.T. Lawrence

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Court : Allahabad

Decided On : Nov-10-2004

Reported in : [2005]144TAXMAN168(All)

Appeal No. : IT Reference No. 59 of 1986 10 November 2004

Appellant : Cit

Respondent : R.T. Lawrence

Advocate for Pet/Ap. : A.N. Mahajan & Bharat Ji Agrawal, *for the Revenue.*

Judgement :

ORDER

Prakash Krishna, J.

The Income Tax Appellate Tribunal, Allahabad has referred the following questions of law under section 256(1) of the Income Tax Act, 1961, hereinafter referred as the Act for the opinion of this Court:

'1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that income computable under the head 'salary' was not liable to tax under section 4 read with section 5(2) of the Income Tax Act, 1961

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that income computable under the head 'salary' had not been

earned in India within the meaning to section 9(1)(ii) of the Act

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the Explanation inserted by Finance Act, 1983 with effect from 1-4-1979 to section 9(1)(ii) could not be applied to assessment earlier to the assessment year 1979-80

4. 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 under section 10(14) of the Income Tax Act, 1961

5. 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 under section 56 as income from other sources?'

2. The assessment year 1978-79 is involved in the present case, the facts of the case are as follows:

The assessee is a non-resident foreign technician in the year under consideration. The Indian Farmers Fertilizers Corporation Limited (hereinafter referred to as IFFCO) entered into an agreement dated 23-3-1976 with Kellogg India Ltd., USA, (hereinafter referred to as KIL). The agreement was made for providing advisory services in India for construction, erection and procurement of equipments for Ammonia Plant at Phulpur, Allahabad. In pursuance of the aforesaid agreement, the assessee was deputed by KIL at India as expatriate personnel. The said agreement was terminated by another agreement called as Termination Agreement dated 31-7-1977. By the earlier agreement the KIL agreed for service of KIL expatriate personnel in India at the site of IFFCO. However, article 4.03 of the agreement dated 23-3-1976 provided that the IFFCO would pay living allowance directly to the assessee. Under the said article certain other benefits like furnished accommodation, conveyance, water and electricity, gas etc. were also to be provided by IFFCO. Further according to article 4.01 of the agreement home leave expenses etc. were to be reimbursed by IFFCO to KIL,

3. There is no dispute about the fact that the assessee was an employee of KIL and the services were rendered in India, but the salary was paid in U.S.A, by KIL.
4. The Income Tax Officer examined the question whether the payment made to the assessee at America by KIL for the service rendered in India can be treated as payment of salary to the assessee within the provisions of section 9(1)(ii) of the Act. He was of the view that the payment made to the assessee who was a non-resident for the year under consideration at USA is liable to be taxed as salary in India as it would be deemed to accrue or arise in India as it is earned in India.
5. In the appeal against the assessment order the CIT (Appeals) held that the case of the assessee is covered by a judgment of Gujarat High Court in the case of CIT v. S.G. Pgnatale : [1980]124ITR391(Guj) , therefore, it could not be said that the payments received by the assessee in U.S.A. and paid by the IFFCO to KIL by way of reimbursement is taxable as salary accrued or arise in India. This order has been confirmed by the Tribunal.
6. Heard Sri A.N. Mahajan, learned Standing counsel for the department. None appeared on behalf of the assessee.
7. This court following the judgment of Gujarat High Court in the case of CIT v. Andre Perrian (IT Reference No. 206 of 1984) dated 3-11-2004 has respectfully followed the aforesaid judgment of the Gujarat High Court. It has been held that the salary paid to the foreign technicians for the assessment years 1977-78 and 1978-79 was neither earned or accrued in India and, therefore, is not taxable in India. It has been further held that there was no relationship of employer or employee, while engaging the services of foreign technicians engaged by BHEL, in that case. The facts of the case in hand are identical to the facts of the case of CIT v. Andre Perrian (IT Reference No. 206 of 1984 dated 3-11-2004). It has been further held that Explanation inserted by Finance Act, 1983 with effect from 1-4-1979 to section 9(1)(ii) of the Act could not be applied to the assessment earlier to the assessment year 1979-80. Therefore, we answer the question Nos. 1,2 and 3 in affirmative i.e. against the department and in favour of the assessee.

8. So far as question Nos. 4 and 5 are concerned, we find that the Tribunal has recorded a finding that the assessee came in India with a specific assignment and was even granted relocation allowance. The Gujarat High Court has held in S.G. Pgnatale's case (supra) that the living allowance was not a reimbursement and was, therefore, not an income.

9. Respectfully following the aforesaid judgment of the Gujarat High Court, we answer question Nos. 4 and 5 in affirmative i.e. against the department and in favour of the assessee.

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