

M.K. Awasty Vs. Assistant Commissioner of

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Feb-28-1995

Reported in : (1995)53ITD240(Delhi)

Judge : R Mehta

Appellant : M.K. Awasty

Respondent : Assistant Commissioner of

Judgement :

1. These three appeals are directed against the separate orders passed by the Deputy Commissioner of Income-tax (Appeals), Range-I, New Delhi raising for the consideration of the Tribunal an identical issue, namely, the taxability of the perquisite value in respect of a car as also the reduction in the claim on account of standard deduction to Rs. 1,000.

2. Before I proceed further it would be necessary on my part to mention that in assessment years 1985-86 and 1987-88 this is the only issue whereas in assessment year 1984-85 there is another ground raised in respect of an addition of Rs. 30,274 which was restored by the Deputy Commissioner (Appeals) to the file of the Assessing Officer. The learned counsel at the outset stated that he was under instructions not to press ground No. 2 in assessment year 1984-85 and this is accordingly being rejected.

3. In respect of the common issue raised in all the three years the Assessing Officer noted during the course of the assessment proceedings that in a statement recorded on oath on 13th June, 1988 with reference to provisions of Section 132(5) of the Income-tax Act, 1961 the assessee had categorically admitted that he was using the company's car for official as also personal purposes. The relevant question-answers are reproduced by the Assessing Officer in the assessment orders. From the assessee's answers, the position which emerged was that: (1) Neither the assessee nor his family members owned any personal vehicles.

(2) The company's vehicles were being used for private purposes as well since 1976.

Taking note of the aforesaid facts the Assessing Officer brought to tax a sum of Rs. 3,600 in each of the assessment years under consideration being the perquisite value at Rs. 300 per month and further reduced the claim for standard deduction to Rs. 1,000 in each of the years.

4. Being aggrieved with the orders passed by the Assessing Officer, the assessee filed appeals before the Deputy Commissioner (Appeals). It was contended at this stage that as per company's resolution the assessee was entitled only to a consolidated salary of Rs. 4,000 per month and no mention of any perquisite was made in the said resolution passed as far back as 6th April, 1978. The aforesaid submissions were rejected by the first appellate authority taking note of the statement recorded by the Assessing Officer in proceedings under Section 132(5) wherein the assessee had categorically admitted to the use of the company's car for private purposes as well. He, therefore, upheld the view taken by the Assessing Officer both in respect of the addition as also the reduced standard deduction.

5. I have heard both the parties at some length and have also perused the material on record to which my attention was invited during the course of the hearing. The learned counsel for the assessee reiterated the arguments advanced before the lower authorities placing reliance on the orders passed by the Deputy Commissioner (Appeals) for assessment years 1980-81, 1981-82, 1982-83 and

1983-84 deleting the addition on account of car perquisite. It was submitted that an identical addition had been deleted by the first appellate authority in the aforesaid preceding assessment years. According to the learned counsel, the resolution of the Board of Directors authorised only the payment of a consolidated remuneration of Rs. 4,000 monthly and no mention was made of any perquisite in respect of the use of company's car for private purposes. It was canvassed that perquisite meant something which was permitted and authorised by the employer to the employee and something which had been taken unauthorisedly would not fall under the aforesaid category. For the aforesaid proposition reliance was placed on the judgment of the Hon'ble Madras High Court in CIT v. C. Kulandaivelu Konar [1975] 100 ITR 629.

6. The learned Departmental Representative, on the other hand, vehemently supported the orders passed by the Deputy Commissioner (Appeals) raising for the consideration of the Tribunal the following main submissions : (1) The earlier orders of the Deputy Commissioner (Appeals) would not be applicable as the present addition had been made on the basis of the assessee's statement recorded under Section 132(5) on 13-6-1988.

(2) The assessee had categorically admitted that the company's car was being used for private purposes since long.

(3) The use of the company's car could be unauthorised if the company had stopped him from using it for private purposes but it would not be so in case no such directions had been given by the company to the assessee.

7. The learned counsel further sought to distinguish the judgment of the Hon'ble Madras High Court in C. Kulandaivelu Konar's case (supra) relied upon by the assessee's Counsel on the ground that the facts were quite different.

8. I have examined the rival submissions and have also perused the material on record to which my attention was invited by the parties.

There is no dispute about the fact that the assessee was sanctioned remuneration at Rs. 4,000 per month consolidated with effect from 1st October, 1977 in his

capacity as the Managing Director of the company M/s. MAC AIR (P.) Ltd. It is also not disputed that in assessment years 1980-81 to 1983-84 a similar addition was deleted by the Deputy Commissioner (Appeals) but as rightly contended by the Departmental Representative the facts were somewhat different and the first appellate authority took the view that such an addition could not be made on surmises and conjectures. According to him, during the assessment years under consideration action under Section 132(5) had been taken note of and which was also confirmed by the Commissioner in an order passed under Section 132(12). These facts have not been disputed by the learned counsel during the course of the present appeals. It has been further admitted by the learned Counsel that in the statement recorded under Section 132(5) the assessee had categorically stated that he did not have any personal car and he had been using the company's vehicles for official as well as private purposes since his appointment as the Managing Director. I would, therefore, at the outset agree with the learned Departmental Representative that during the assessment years under appeal the facts were different.

9. At this stage I would like to refer to the judgment of the Hon'ble Madras High Court in C. Kulandaivelu Konar's case (supra) relied upon by the learned counsel in support of the stand taken that nothing was required to be added as a perquisite in case the use was unauthorised.

It must be appreciated that the assessee at the relevant point of time was the Managing Director of the company and that the resolution passed on 6th April, 1978 authorised a payment of Rs. 4,000 per month consolidated without mention of any perquisites. In the case of a private limited company the shareholders and the Directors of the company are more or less identical persons and if that be not so, then they are normally persons who are intimately connected with each other either as relatives or friends and associates. In such a situation, it is rather odd to contend that the use of the company's vehicles was unauthorised especially when the company is being run by the Board of Directors, which is headed by the assessee as a Managing Director. In other words, the person who runs the company and who authorises day-to-day actions and the person who is supposed to be using the car and which in this case is stated to be unauthorised, is one and

the same. In the case before the Hon'ble Madras High Court the question was somewhat different as the assessee who was the Managing Director of a private limited company was depositing his income from various sources in an account with the company and from time to time was also withdrawing funds from the same account which resulted in substantial debit balances. It was further noted that the company was borrowing moneys in respect of which it was paying interest to outsiders. The Assessing Officer took the view that to the extent of debit balances against the assessee, there had been diversion of money for non-business purposes and, therefore, in the assessment of the company he disallowed a sum of Rs. 29,718 which was the interest referable to the amounts withdrawn by the assessee and standing to his debit. While making the assessment of the assessee the Assessing Officer treated the same amount, viz., Rs. 29,718 as a "perquisite" within the meaning of Section 17(2)(iv) and added the same to the salary income. On further appeal, the Appellate Assistant Commissioner confirmed the action of the Assessing Officer but with a "recalculation" in respect of the amount. On further appeal by the assessee, the Tribunal considered the applicability of Sections 17(2)(iv) and 17(2)(iii) and opined that the former was not applicable as there was no privity of contract between the creditors of the company and the assessee and there was no obligation on the part of the assessee to pay any interest to the creditors. As regards the applicability of Section 17(2)(iii), the Tribunal was of the view that the benefit contemplated under that provision was only a benefit or amenity which would not be refundable or returnable and in the instant case the overdrawings in the current account would be refundable by the assessee to the company and, therefore, not falling under Section 17(2)(iii). The Tribunal further referred to the relationship of a debtor and creditor between the assessee and the company and the non-liability to pay interest on the overdrawings as not being the result of any employer-employee relationship. On the foregoing reasons the Tribunal held that Section 17(2)(iii) was also not attracted. At the instance of the revenue a question was referred for the opinion of the Hon'ble High Court vis-a-vis the provisions of Section 17(2) of the Income-tax Act, 1961.

On the applicability of Section 17(2)(iv), their Lordships upheld the view taken by the Tribunal but proceeded to reject the submissions made on behalf of the

assessee vis-a-vis provisions of Section 17(2)(iii) and on the facts of the case their Lordships opined that the assessee was granted a "benefit" within the meaning of Section 17(2)(iii) and which was liable to be taxed in his hands. It accordingly reversed the view taken by the Tribunal.

10. It is quite apparent that the judgments the Hon'ble Madras High Court dealt with entirely different facts whereas in the present case the person who runs the company, viz., the assessee and the person who has admitted on oath that he has been using the company's vehicles for private purposes as well since 1976 is the same. The resolution of the Board sanctioning remuneration at Rs. 4,000 per month no doubt leaves out any reference to the grant of any perquisites but if the view canvassed by the assessee is accepted, then it would mean that non-mention of "perquisites" in a resolution would never enable the Department to bring to tax any perquisites which an individual assessee admits that he is availing of unauthorisedly. In my opinion, this could never be the situation envisaged and on the facts of the present case I am not inclined to accept the stand taken by the learned Counsel on behalf of the assessee. I have already observed to the effect that the judgment of the Hon'ble Madras High Court in C. Kulandaivelu Konar's case (supra) is distinguishable. In the final analysis I uphold the orders passed by the Deputy Commissioner of Income-tax (Appeals) for all the three years under consideration not only with respect to the taxability of the perquisite value of the car, etc., but also with reference to the grant of standard deduction at Rs. 1,000.

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