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Court : Delhi

Decided On : Aug-10-2001

Reported in : (2001)170CTR(Del)215

Appeal No. : IT Ref. Nos. 410 of 1985 & 94 & 95 of 1986 10 August 2001 A.Y. 1978-79 to 1980-81

Appellant : Sohan Singh

Respondent : Cit

Advocate for Pet/Ap. : None, for the assessed; Sanjiv Khanna and; Ms. Prem Lata Ba

Judgement :

Arijit Pasayat, C.J.

These three reference applications involve identical issues and, thereforee, we dispose of them by this common judgment.

At the instance of assessed, following questions have been referred for opinion of this court under section 256(1) of the Income Tax Act, 1961 by the Income Tax Appellate Tribunal, Delhi Benches B and E (hereinafter referred to as the Tribunal) :

For assessment year 1979-80

'Whether, on the facts and in the circumstances of the case, the Tribunal was right in sustaining the addition of Rs. 26,000 as income of the assessed under section 2(24)(iv) of the Act ?'

For the assessment year 1978-79 & 1980-81

'Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that the income of Rs. 24,750 and Rs. 5,000 were assessable under the provisions of section 2(24)(iv) and 17(2)(iii) in the assessment years 1979-80 and 1980-81, respectively ?'

Dispute relates to the assessment years 1978-79, 1979-80 and 1980-81.

2. Factual position in nutshell is as follows :

assessed was one of the directors of National Chemical Industries Limited, New Delhi. His account in the books of account maintained by the aforesaid company was a debit balance as on the end of the relevant accounting period. The company did not charge any interest on the amount standing to the debit of the assessed. Income Tax Officer required the assessed to explain why the amount, on which interest should have been charged, should not be treated as income in terms of section 2(24)(iv) of the Act. It was noticed that the company was paying interest @ 15 per cent to the banks from whom it had borrowed funds. assesses Explanationn was that the amount in question cannot be covered under section 2(24)(iv) of the Act. But the assessing officer did not accept the Explanationn and calculated interest payable @ 12 per cent and worked out the final amount which was taken as value, of the benefit and as such to be deemed income of the assessed under section 2(24)(iv) of the Act. assessed preferred appeals before the Commissioner (Appeals) who accepted assesses stand and deleted the additions for the assessment years 1979-80 and 1980-81 but for 1978-79, action of the assessing officer was maintained. Revenue carried the matter in appeal before the Tribunal for the assessment years 1979-80 and 1980-81 while assessed preferred appeal for the assessment year 1978-79. It was contended that withdrawals made by the assessed from the company were duly entered in the books of the company and were incorporated in the annual audited statement

of accounts which implied tacit, if not expressly, the approval of the company to the waiver of interest. Accordingly it was held that the amount in question was rightly brought to tax by the assessing officer as income of the assessed. On being moved for reference, questions as set out above have been referred for opinion of this court.

3. We have heard learned counsel, for revenue. There is no appearance on behalf of the assessed in spite of notice.

4. The Apex Court had occasion to consider a similar question in V.M. Salgaocar & Bros. (P) Ltd. v. CIT : [2000]243ITR383(SC) . It was inter alia held as follows :

'Sections 17(2) and 40A of the Income Tax Act, 1961, were amended by the Taxation Laws (Amendment) Act, 1984. Sub-clause (vi) of clause (2) of section 17 of the Act, as inserted by the Amendment Act of 1984, provided that where the employer has advanced any loan to the employee and either no interest is charged by the employer on the amount of such loan or interest is charged at a rate lower than the rate of interest which the Central Government may specify, then, (a) where the loan is advanced without charging any interest, the interest calculated in the prescribed manner on such loan at the rate so specified, and (b) where the loan is advanced by charging interest at a rate lower than the rate so specified, the difference between the rate of interest calculated in the prescribed manner on such loan at the rate so specified and the interest charged by the employer, shall be deemed to be a perquisite. An amendment on similar lines was made in section 40A of the Act to provide that the amount of interest referred to in item (a) or item (b) as the case may be, of sub-clause (vi) of section 17(2) of the Act, shall be regarded as perquisite provided by the assessed to his employee for the purposes of section 40A(5) of the Act. These amendments were intended to take effect from 1-4-1985. However, subsequently, the Finance Act, 1985, sought to omit both the aforesaid provisions with effect from the date of their insertion, namely, 1-4-1985. Clause 20 of the memorandum explaining the provisions of the Finance Bill, 1985 stated that as a measure of relief to salaried taxpayers, the Bill sought to omit the aforesaid provision with effect from the date of its proposed insertion, namely, 1-4-1985. The CBDT issued a Circular dated 12-6-1985,

incorporating the objectives sought to be achieved by omission of clause (vi). Earlier, the CBDT had issued a circular explaining the objectives in inserting clause (vi). By the 1984, Amendment Act, Parliament wanted to carve out a particular exception from the otherwise exclusionary clauses for the purposes of computation of income-tax. This provides a clear direction to interpret the provision of sections 17(2) and 40A(5) before insertion of clause (vi). The circulars of the CBDT also provide as to how the revenue itself understood the effect of the amendment and what was the law before the Amending Act, 1984.

Above being the law laid down by the Apex Court, Tribunals view cannot be maintained. The questions referred, thereforee, have to be answered in the negative, in favor of the assessed and against revenue.

The references stand disposed of accordingly.

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