

R. Tomassoni Vs. Asstt. Cit

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Aug-02-2004

Reported in : (2004)1SOT150(Delhi)

Appellant : R. Tomassoni

Respondent : Asstt. Cit

Judgement :

These two appeals have been filed by the assessee against separate orders of the learned CIT (A) for assessment year 1993-94. Since facts and issues involved in both the appeals are substantially identical and these appeals have been heard together, these are being disposed of by a single order for the sake of convenience.

The appellant-assessee involved in these appeals are individuals of Italian nationality and have been employed by M/s. Snamprogetti SpA, a company formed and incorporated under the Italian law and having its registered office and principal place of business in Italy. In February, 1988, M/s. Snamprogetti SpA had entered into a contract with M/s. Arawali Fertilizer Chemicals Ltd. (AFCL) of India, subsequently renamed M/s, Chambal Fertilizer and Chemicals Ltd. (M/s.

CFCL, hereinafter referred to as) under which it agreed to provide to the Indian company Various technical services for the purpose of construction, erection and commissioning of its fertiliser plant in the State of Rajasthan. The appellant-assessee involved in the present appeals before us are the technical personnel

who have been appointed by the Italian company for the purpose of rendering services in relation to the contract with M/s. CFCL in India. The issues involved in both these appeals are with regard to taxability of the various perquisites like rent free accommodation, chauffeur driven car and contribution to provident fund etc. received by these employees.

Learned counsel for the assessee appellants filed separate paper books for both the appeals. These paper books are also accompanied with synopsis of arguments with regard to the grounds of appeal. Certain decisions of the Tribunal in the cases of Mr. A. Crossetto as well as Mr. A. Lupi have been relied upon and copies of Tribunal decision in the case of Mr. A. Crossetto have also been filed. However, the Bench specifically pointed out to the learned counsel that the CIT (A) in the impugned appellate order dated 2-5-1997 in the case of Tomassoni, one of the appellant before us, has referred to the decision of the Tribunal Delhi Bench in the case of Belloni Gianni, who are also employees of the Italian company and in these decisions, the Tribunal has, after detailed discussion of the facts and issues involved, held that rent free accommodation, utilities and chauffeur driven car provided to these employees are liable to be included in the total income of these employees. Learned counsel, however, did not offer any comments when confronted with the said decision of the Tribunal and submitted that the issues arising in the present appeals may be decided in the light of the decisions of the Tribunal.

We have gone through the decision of the Tribunal dated 29-5-1996 in G.Belloni (IT Appeal No. 7489 (Delhi) of 1994) and copy of the said decision is available on record. In this decision, the Tribunal has disposed of a group of appeals relating to expatriate employees of Italian company, namely, Snamprogetti SpA. These employees have been appointed by the Italian company in India for the purpose of rendering technical services in relation to the contract entered into by the Italian company with Nagarjun Fertilisers and Chemicals Limited. Terms and conditions of employment of all the 12 employees have been reproduced in the Tribunal's decision in para 15. Referring to the employment letter, the Tribunal reached the finding that employer was obliged as part of the employment contract to provide boarding and lodging to the site of the employee. The Tribunal held that from the

language of section 17(2), it is abundantly clear that the value of rent free accommodation provided to the assessee by his employer and the value of benefit amenity provided free of cost by way of meals fall within the ambit of perquisites as defined under section 17(2). That being so, the claim of the assessee for exemption under section 10(14)(i) falls to the ground as the basic condition for grant of exemption under the said section is that the allowance or the benefit should not be a benefit in the form of perquisites within the meaning of section 17(2).

With regard to the perquisites of tax borne by the Indian company, the Tribunal held that the tax as worked out in respect of the salary and perquisite would be assessed under the head income from other sources.

Now, so far as the present appellants are concerned, we have already mentioned that facts are substantially identical with that of G.Belloni case decided by the Tribunal as above. Both the appellants before us, namely. Mr. R. Tomassoni and Mr. Kukoc Ivan are employees of the Italian company, Snamprogetti SpA. In the case of R. Tomassoni, letter of appointment issued by the employer company is placed in the paper book at page 40, which reads as under : With the present we confirm that you have been appointed in India in relation to the contract with Chambal Fertilisers Ltd. with the qualification of Construction Manager.

During your stay in India the following conditions and benefits will apply : 3. Six weeks of vacation per each year of service in that Country including one round-trip from your residence in Italy to your place of work in India at the beginning and end of your assignment at company cost.

4. The company will pay you an amount of Rs. 14,780 to reimburse you for the living costs.

5. Company will pay all the statutory contributions for any provident funds in Italy and/or in India.

In the case of Mr. Kukoc Ivan, second appellant before us, letter of appointment issued by the Italian company is placed in the paper book at page 38 and is on

similar lines as reproduced above. These appointment letters clearly indicate that both the appellants have been appointed in India for the purpose of working as technical personnel in relation to the contract with M/s. CFCL in India. The duration of appointment has been mentioned as one year. However, the same appears to have been extended and the employees have been working in India for the extended period including the assessment year 1993-94 under appeal.

In the case of Mr. Kukoc Ivan, the stay in India has been indicated by the CIT (A) vide para 4 of the appellate order as under : In the paper book filed by the learned counsel in the appeal relating to Mr. R. Tomassoni before us, pages 41 to 54 contained the agreement entered into by Snamprogetti SpA, Italy with the CFCL, India for building a fertilizer plant at Sawai Madhopur, India. Article 3.5 of the Agreement enjoins upon the CFCL, inter alia, the following obligation under the contract: "Undertake to directly bear the cost of lodging, boarding, travel, transportation and long distance communication for its personnel assigned outside India, pursuant to the CONTRACT : properly insure such personnel at his expenses against injury and death and against possible damages caused to third parties by them." Similar agreement is applicable in the case of other assessee before us. By virtue of this contractual obligation, the assessee-employee has been provided perquisites like rent accommodation, chauffeur driven car, etc.

It is a fact that the residential accommodation, transport as well as utilities have been provided to the two assessee's employees before us by CFCL with whom no relationship of employer-employee subsists.

However, the perquisites are being received under a settled Scheme of business transactions carried on between two business organizations in one of which, both the assessee's are employees and such perquisites are not being received fortuitously. Such perquisites would obviously be of the nature of income. The perquisites are an integral part of the employment of the assessee with the Italian company, and have, therefore, of a connotation of income. Both the assessee's have been appointed by the Italian company, in India are required to perform the services in terms of the contract entered by the Italian company with CFCL. While the assessee's are staying in India in pursuance of those contracts, salary has

been received from the employer as well as perquisites like rent free accommodation, utilities and chauffeur driven car from the Indian company, namely, CFCL. There can be no doubt that those amounts which the assessee has received as salary and allowances are liable to be brought to tax. First, it is beyond dispute that the salary which the assessee had received from the Italian employer during the stay in India is liable to be taxed under the Income Tax Act. However, the assessee has claimed exemption from the Income Tax Act the perquisites received from the Indian company during the period of stay in India. The definition of income in section 2(24) is an inclusive definition. It adds several artificial categories to the concept of income but on that account the expression does not lose its natural connotation. Anything which can properly be described income is taxable under the Act unless of course it is exempted under one or the other provision of the Act. It is from the said angle that we have to examine whether perquisites and benefits received by the assessee from CFCL in India can be treated as income of the assessee.

It cannot be overlooked that such benefits have been received from CFCL who has provided the same on behalf of the Italian company. These perquisites have not been allowed to the assessee gratuitously by CFCL. But, for the agreement entered into by CFCL with Italian company, as reproduced hercinbefore, the assessee would have to pay for such benefits and perquisites themselves. It would need be unrealistic to say that these benefits had no integral connection with the salary received by the two assessee. We are, therefore, of the opinion that the perquisites and benefits received by the two assessee before us from CFCL are liable to be included in their income for the assessment year under reference.

The question then arises as to under which head of income, the said income should be placed inasmuch as the two assessee, namely, Mr. R.Tomassoni and Mr. Kukoc Ivan are not employees of CFCL which provided the perquisites and benefits. It must necessarily be placed under sub-section (1) of section 56 as income from other sources. According to the said sub-section, income of every kind which is not to be excluded from the total income under the Act shall be chargeable to income-tax under the head income from other sources if it is not

chargeable to income-tax under any of the other heads specified in section 14. In support of the view taken by us, reliance is placed on the direct decision of Supreme Court in *Emil Webber v. CIT* (1993) 200 ITR 483 (SC). A similar view has been taken by A.P. High Court in the case of *Zdzizlaw Skakuz v. CIT* (1986) 158 ITR 420 (AP). We may at this stage refer to the contention of the learned counsel that both the assesseees are entitled to exemption from tax under section 10(14)(i) of the Income Tax Act in terms of clause (b) of Notification S.O. 143(E), dated 21-2-1989 and Notification S.O. 606(E), dated 9-6-1989 issued by the Government of India in exercise of its powers, exemption is claimed on the ground that the normal place of duty of the assesseees in the employment of Snamprogetti SpA, Italy was in Italy and the two employees have been deputed by the employer to India to render technical supervisor services for a temporary duration in India and further that the facilities by way of rent free accommodation as well as utilities and transportation have been provided by CFCL wholly and exclusively to enable the employees to render services in setting the fertilizer plant. We are not persuaded to accept the contention of the learned counsel. From the appointment letters issued by Snamprogetti SpA to the two assesseees, as reproduced hereinbefore, it is evidently clear that both the assesseees employees have been appointed in India and have not been sent on tour to India. In terms of the appointment letters, the normal place of duty of the two employees is in India and the provisions of section 10(14) are, therefore, not applicable in the instant case. The contention is, therefore, rejected.

In the backdrop of the aforesaid discussion, we may now deal with the specific grounds of appeal arisen in the two appeals before us.

In the case of Mr. R. Tomassoni in ITA No. 4418/97, Ground No. 1 is against assessment of the following perquisites Rent free residential apartment at 12.5% of the salary of the assessee for 222 days Utilities, i.e., supply of water and electricity in the aforesaid residential apartment, at 6.25% of the salary of the assessee for 222 days Chauffeur driven car for local transportation between the residential apartment and CFCLs Industrial work-site (for 222 days).

For the reasons discussed hercinbefore, we uphold the addition and dismiss the ground of appeal.

Ground No. 2 is against upholding the taxation of tax perquisite of Rs. 1,32,282 being the amount of tax on a salary.

Respectfully following the Tribunals decision in G. Bellonis case (supra) as well as the Supreme Court decision in Emil Webbet case (supra) and Andhra Pradesh decision in Zdzizlaw, Skakuzs case (supra), we uphold the addition.

14. The assessees appeal in ITA No. 4418/Delhi/97 is, therefore, dismissed.

Now, we take up ITA No. 4419/Delhi/97, the appellant being Mr, Kukocvan.

Ground No. 1 is against the addition of Rs. 58,070 being the contribution to the provident fund account of the assessee by the employer company in Italy under the Italian law.

Assessing officer and the CIT (A) has treated the said amount of provident fund contribution as perquisite under section 17(2)(v) of the Income Tax Act. However, the provident fund of the assessee maintained in Italy by the employer company is admittedly not a recognised provident fund and is, therefore, not covered under the provisions of section 17(2)(v) of the Income Tax Act, 1961. The said clause would rope in the contribution made by the employer to recognise provident fund or an approved superannuation fund. Unless the fund is recognised under the Income Tax Act, section 17(2)(v) would not apply and, therefore, the contribution made by the employer to such unrecognised fund in Italy cannot be treated as perquisite under section 17(2)(v).

However, when the assessee receives any payment out of such fund, the same is liable to be treated as salary in the year of receipt of such payment. With these observations, the addition of Rs. 58,070 sustained by the learned CIT (A) is hereby deleted.

Ground No. 2 is against sustained the addition on account of addition as under :
Ground Nos. 3 & 4 are against addition of Rs. 2,28,330 on account of perquisite.

Ground No. 5 projects the grievance that the CIT (A) has not adjudicated the ground relating to levy of interest under section 234B. Since the CIT (A) has not adjudicated the ground, issue is remanded back to the CIT (A) for adjudication of this ground after allowing the opportunity to the assessee.

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