

Cit Vs. Raghu Sinha

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Court : Rajasthan

Decided On : Apr-16-2003

Reported in : [2003]130TAXMAN254(Raj)

Appeal No. : D.B. IT Reference Application No. 49 of 1995 16 April 2003

Appellant : Cit

Respondent : Raghu Sinha

Advocate for Pet/Ap. : Anurup Singhi and J.K. Singhi, *for the Revenue Mahendra Gargiey, for the Assessee*

Judgement :

On an application under section 256(1) of the Income Tax Act, 1961, (hereinafter referred to as 'the Act, 1961'), the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (hereinafter referred to as 'the Tribunal') vide its order dated 18-6-1993 has referred the following question for the opinion of this court :

'Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in upholding the order of the Commissioner (Appeals) taking the view that the medical expenditure amounting to Rs. 5,20,230 reimbursed to assessee being in the employment of M/s. National Engineering Industries Ltd., Jaipur was not treatable as a perquisite in the hands of the assessee under section 17 of the Income Tax Act, 1961 ?'

2. During the period relevant to assessment year 1987-88, the assessee Shri Raghu Sinha was in the employment of M/s. National Engineering Industries, Jaipur.

3. In connection with the business of the employer the assessee left for USA on 30-8-1986 and fell ill there. He was admitted in the hospital where he was to undergo coronary artery bypass surgery on 2-10-1986 and paid treatment expenses of Rs. 5,20,230. The expenditure incurred by the assessee was reimbursed by the employer company with the permission of the Reserve Bank of India.

4. The assessee has claimed before the assessing officer that it is not a perquisite within the meaning given under section 17(2) of the Act, 1961. The assessing officer did not allow it as a deduction and held that it is a perquisite within the meaning section 17(2) of the Act, 1961.

5. In appeal before the Commissioner (Appeals), the Commissioner (Appeals) held that the same was not taxable at all. In appeal before the Income Tax Appellate Tribunal, Jaipur the Tribunal relying upon the decision in the case of Mrs. Asha Golecha v. Assistant Commissioner (1992) 42 ITD 7 (Trib) held that the medical expenditure incurred by the employee and reimbursed by the employer is not perquisite in the hands of assessee.

6. Heard, learned counsel for the parties.

7. Mr. Singhi, learned counsel appearing for the revenue submits that the relevant assessment year in this case is 1987-88 and prior to that the department has issued a Circular No. 445 dated 31-12-1985 wherein the Central Board of Direct Taxes has clarified that reimbursement of medical expenses which are incurred in India in the public hospital by the employee that should not be taken as perquisite, if the expenses are genuine. Mt.. Singhi submits that in view of the Circular of the CBDT, which is applicable for the assessment year 1987-88, the Tribunal has committed error in holding that it is not perquisite within the meaning of section 17(2) of the Act, 1961.

8. Mr. Mahendra Gargiey, learned counsel appearing for the assessee on the other hand submits that whether the medical expenses reimbursed by the employer should be treated as benefit or as amenity provided by the employer to the employee under section 40A(v) and payment made in cash whether it is covered by section 40(a)(v) or section 40A(v) of the Act, 1961 has been considered by the Apex Court in CIT v. Mafatlal Gangabhai & Co. (P) Ltd. : [1996]219ITR644(SC) and the Apex Court has taken a view that in case the reimbursement to an employee, the payment made by the employer contemplated by these words is not evidently a payment to the employee but to a third party. Not only that Explanation 2(v) also refers the cash payment but that too is not to the employee. Therefore, their Lordships of the Supreme Court have taken a view that the cash payment by assessee- employer to his/its employee do not fall within the ambit of section 40A(v) or section 40A(5)(a)(ii) of the Act, 1961 ?

9. Learned counsel for the assessee citing some decisions of the Apex Court in Commonwealth Trust Ltd. v. CIT : [1997]228ITR1(SC) and of this court in the case of CIT v. Rajasthan Patrika Ltd. (2000) 258 ITR 300 and CIT v. Ramdeo Samadhi and submits that the reimbursement of the medical expenditure incurred outside of India should not be taken as perquisite within the meaning of section 17(2) of the Act, 1961.

10. Whether the medical reimbursement amount of Rs. 5,20,230 is perquisite or not within the meaning of section 17(2) of the Act, 1961, we have to see the provisions. The relevant sub-section (2) of section 17 of the Act, 1961 reads as under:

'(2) 'perquisite' includes

(i) the value of rent-free accommodation provided to the assessee by his employer;

(ii) the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer;

(iii) the value of any benefit or amenity granted or provided free of cost or at concessional rate in any of the following cases

(a) by a company to an employee who is a director thereof;

(b) by a company to an employee being a person who has a substantial interest in the company;

(c) by any employer including a company to an employee to whom the provisions of paragraphs (a) and (b) of this sub-clause do not apply and whose income under the head 'Salaries' whether due from or paid or allowed by, one or more employers, exclusive of the value of all benefits or amenities not provided by way of monetary payment, exceeds fifty thousand rupees;'

Clause (iii) of sub-section (2) of section 17 of the Act, 1961 provides that the value of any benefit or amenity granted or provided free of cost or at concessional rate in any of the following cases i.e., to an employee by a company, by a company to an employee having substantial interest in the company or by an employer to its employee than that should be treated perquisite within the meaning of clause (iii) of sub-section (2) of section 17 of the Act, 1961.

11. Even section 40A(v) and section 40(a)(v) talks about the payment in cash. Sub-section (2) of section 17 does not require or make any difference between the payment in cash or otherwise.

12. When a doubt was raised whether the medical expenses incurred by the employer should be treated as perquisite within the meaning of section 17(2) of the Act, 1961, the CBDT has made it clear that if the medical expenses are incurred on treatment of the employee in India and in a public hospital and the expenditure is genuine that should not be treated as perquisite in the hands of employee. But no such benefit has been extended to the employee if the treatment is outside of India. Considering the intention of the legislation and clarification of the CBDT on the issue we find no justification to confirm the view taken by the Tribunal. Even the circular has not been considered by any of the courts in their judgments referred to by the learned counsel for the assessee.

13. Therefore, we are of the opinion that the Tribunal has committed error in not considering the reimbursement of Rs. 5,20,230 as perquisite in the light of the circular referred to above.

14. In the result, we answer the question in negative i.e., in favour of the revenue and against the assessee.

15. The reference petition stands disposed of.

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