Ishwar Lal And R.B. Suraj Narain ... vs Commissioner Of Income-Tax, Delhi, ... on 28 August, 1968

Equivalent citations: [1969]72ITR399(SC), AIRONLINE 1968 SC 4

Bench: J.C. Shah, A.N. Grover

JUDGMENT

Ramaswami, J.

1. The appellant, Shri Ishwar Lal, hereinafter referred to as "the assessee", was one of the Directors of M/s. J. N. Singh & Co. Ltd., hereinafter referred to as "the company". The assessee received for the financial year 1948-49 by way of director's fee a sum of Rs. 1,200 in addition to an annual remuneration of Rs. 10,000. This remuneration was paid to the assessee in pursuance of a resolution passed at a meeting of the board of directors held on January 6, 1949, which read as follows;

> "Resolved that the remuneration of the three directors R. B. Mr. Suraj Narain, R.B. Mr. Devi Singh and Mr. Ishwar Lal be fixed at Rs. 10,000 each for the year 1948-49 and these amounts shall be payable out of the profits of the company."

2. The resolution was confirmed in an extraordinary general meeting of the shareholders held on February 8, 1949, but the assessee was actually paid this sum as a remuneration on April 5, 1949. The assessment year in this case is 1950-51, the previous year being the financial year 1949-50. The predecessor of the assessee, Mr. C.B. Lall, was similarly paid a remuneration of Rs. 9,000 as director's fee for the year ending on June 30, 1940, corresponding to the assessment year 1940-41. This and other similar amounts paid to other directors were claimed by the company as revenue expenditure, but the claims were disallowed by the Income-tax Officer.

The disallowance was confirmed on appeal by the Appellate Assistant Commissioner. As a result of the disallowance the directors claimed that the tax paid on the respective amounts paid to them had resulted in double assessments and refunds should be granted. The Commissioner of Income-tax accepted this claim. The order of the Commissioner of Income-tax in the case of Mr. C.B. Lall dated April 2, 1945, reads as follows :

> "In the 1941-42 assessment of M/s. J.N. Singh and Co. Ltd. a sum of Rs. 9,000 on account of director's remuneration was disallowed. This disallowance was upheld in appeal. Meanwhile the assessee was also assessed on the above remuneration in his 1941-42 assessment which was paid earlier in 1940. There has, therefore, been a double assessment of this sum. I, therefore, direct that this sum shall not be

> subjected to tax in his personal assessment but will be included in his total income for rate purposes."

3. The company did not pay any such remuneration for the years ending June 30, 1941, to June 30, 1948, and thereafter, the remuneration was paid for the first time to the assessee and other directors for the previous year ending on June 30, 1949, corresponding to the assessment year 1950-51. The company did not claim the amount paid as remuneration to the directors as revenue expenditure in view of the orders of the income-tax authorities passed for the assessment year 1941-42. The assessee claimed that the remuneration paid to him should not be taxed for the relevant assessment year as it will result in double assessment. The claim of the assessee was rejected by the Income-tax Officer and also by the Appellate Assistant Commissioner in appeal. The assessee took the matter in appeal to the Income-tax Appellate Tribunal which dismissed the appeal holding that since the company did not claim the amount paid to the assessee as revenue expenditure the question of allowance or disallowance of such a claim did not arise, with the result that exemption was not available to the assessee according to the Notification No. 878-F dated March 21, 1922, as amended by Notification No. 8 dated March 24, 1928. Under Section 66(2) of the Income-tax Act, 1922, the Appellate Tribunal made a statement of the case to the High Court on the following questions of law :

> "(1) Whether the director's remuneration of Rs. 10,000 received by the assessee from Messrs. J. N. Singh and Co. Ltd., under the terms of the shareholders' resolution dated the 8th February, 1949, is exempt from tax under Notification No. 878-F,dated March 21, 1922, as amended and issued by the Finance Department of the Government of India under Section 60 of the Indian Income-tax Act or otherwise under the Act ?
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> (2) Whether it was a necessary condition for the application of the terms of the Notification referred to in question No. (1) to the facts of the present case that the amount of remuneration should have been claimed as a deduction by the company in its assessment and whether it was necessary for the company to make the claim year after year ?"

4. By its judgment dated February 5, 1962, the High Court answered the questions in favour of the Commissioner of Income-tax and against the assessee. This appeal is brought by certificate granted by the High Court under Section 66A(2) of the Income-tax Act, 1922.

5. It is necessary at this stage to set out the terms of the Notification No. 878-F dated March 21, 1922, as amended by Notification No. 8 of March 24, 1928, which is to the following effect:

> "Incomes included in total income but exempt from income-tax and not from super-tax.--The following classes of income shall be exempt from the tax payable under the said Act, but shall be taken into account in determining the total income of an assessee for the purposes of the said Act :

> (1) Sums received by an assessee on account of salary, bonus, commission or other remuneration for services rendered, or in lieu of interest on money advanced, to a person for purposes of his business, where such sums have been paid out of, or determined with reference to, the profits of such business, and by reason of such mode of payment or determination, have not been allowed as a deduction but have been included in the profits of the business on which income-tax has been assessed and charged under the head 'business':
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> Provided that such sums shall not be exempt from the payment of super-tax unless they are paid to the assessee by a person other than a company and have already been assessed to super-tax....."

6. On behalf of the appellant the argument was stressed that the High Court erred in holding that it was a condition precedent to the assessee getting the benefit of the Notification that the company should have made a claim for the deduction, whether such a claim was allowable or not under the law. It was argued that, on a plain reading of the Notification, it was sufficient that deduction should not have been allowed to the company by the income-tax authorities, whether or not the company claimed such deduction and that the amount should have been included in the profits of the company and was assessed to tax. In our opinion, the argument put forward on behalf of the appellant is well-founded and must be accepted as correct. The obvious purpose of the Notification in question is to avoid double taxation by providing that if the amount has been assessed and charged in the hands of the company the same should not be assessed and charged over again in the hands of the assessee. There is nothing in the language of the Notification to suggest that it was a condition precedent for getting the benefit of the Notification that the company should have expressly made a claim for deduction and that claim should have been expressly disallowed. The words used in the Notification are "have not been allowed as a deduction" and there is no warrant for construing those words as "have been claimed and not allowed as a deduction". We are, on the contrary, of the opinion that, on a plain reading of the language of the Notification, the only requirement is that the deductions should not have been allowed to the company, whether or not it had claimed such deductions, and, in such a case, the assessee was entitled to get the benefit of the Notification.

7. For these reasons we hold that the judgment of the High Court dated February 5, 1962, should be set aside and the question referred to the High Court by the Income-tax Tribunal should be answered in favour of the assessee and against the Commissioner of Income-tax, Delhi, Rajasthan, and Madhya Pradesh. We accordingly allow this appeal with costs.

8. Civil Appeal No. 2522 of 1966. The material facts of this case are almost identical with those of Civil Appeal No. 2521 of 1966 and the questions of law are also identical with those arising in that case and for the reasons given in that judgment, we hold that the judgment of the High Court of Punjab dated February 5, 1962, should be set aside and the questions referred by the Income-tax Appellate Tribunal should be answered in favour of the appellant and against the Commissioner of Income-tax. We accordingly allow this appeal also with costs--there will be one set of hearing fee for this case as also for Civil Appeal No. 2521 of 1966.