Commissioner Of Income Tax, Bombay vs Imperial Surgical Co. (Pvt.) Ltd. on 22 August, 1991

Equivalent citations: [1991]192ITR646(SC), 1993SUPP(4)SCC2, AIRONLINE 1991 SC 75

Author: S. Ranganathan

Bench: S. Ranganathan

ORDER

1. This is an appeal from an order of the High Court of Bombay declining to direct the Tribunal to state a case for its decision under the Income-tax Act, 1961.

2. The respondent assessee-company paid seven of its employees, in addition to what was described as their salary, certain amounts of bonus, commission and house rent allowance. Treating these items as perquisites within the meaning of Section 40(a)(v), the Income-tax Officer disallowed a sum of Rs. 47,440. This was held to be the amount in excess of 20% of their salary.

3. The Appellate Assistant Commissioner, however, allowed the appeal and on further appeal by the Department the Tribunal confirmed the order of the Assistant Commissioner. Though the Tribunal observed in general that these items could not be treated as benefits or perquisites because they represented cash payments made by the company, it also found as a fact that the payments had been made in pursuance of resolutions of the company and in accordance with the terms of employment of the employees in question.

4. The appellant applied to the Tribunal for referring a question of law to the High Court but the Tribunal dismissed the same observing that its conclusion had rested on the findings of fact in the case. The High Court also declined to direct a reference on the very short ground that the question was covered by a circular of the Central Board dated March 4, 1972. Hence, this appeal.

5. The question before us is whether there is a question of law arising out of the Tribunal's order which should have been referred to the High Court or not. At the outset, we should like to point out that the appeal relates to the assessment year 1971-72 and about 20 years have elapsed since then. Section 40(a)(v) has since been replaced by another Section 40A(5) which has also been substituted in 1989. The amount of tax involved will only be around Rs. 20,000. Even if we allow the appeal, our order will only result in a question of law being referred to the High Court and it will take several more years before the question can be decided on its merits finally. These considerations apart, the High Court has disposed of the application under Section 256(2) on the ground that the matter is covered by a circular of the Board. Apparently, both the Appellate Assistant Commissioner and the Tribunal had also gone by the purport of the circular though they have not explicitly referred to it in their orders. In these circumstances, we do not think any useful purpose will be served by directing a

reference in this case.

6. The appeal, therefore, fails and is dismissed. However, as already directed by this court, the respondent's costs of the appeal will also have to be borne by the appellant.