

Commissioner of Income-Tax, Assam and Nagaland

Vs

G Hyatt

Civil Appeal No. 1174 of 1967

(CJI J. C. Shah, S. K. Hegde, A. N. Grover JJ)

21.01.1971

JUDGMENT

HEGDE, J. -

The Commissioner of Income-tax, Assam and Nagaland, has brought this appeal by certificate. The assessment with which we are concerned in this appeal is for the assessment year 1963-64, the relevant accounting year is the financial year 1962-63. The assessee was the manager of a tea estate under the managing agency of M/s. Gillanders Arbuthnot & Co. Ltd. The said company had a provident fund scheme for its employees. But that provident fund was not a recognised one. The assessee retired during the previous year relevant to assessment year 1963-64 and received out of this provident fund an amount of Rs. 27,948 which represented the interest on the amount of his own contribution to the fund. The Income-tax Officer assessed this amount as the assessee's income from other source. That order was confirmed in appeal by the Appellate Assistant Commissioner. But, on further appeal to the Tribunal by the assessee, the Tribunal came to the conclusion that the receipt in question being profits "in lieu of salary"

"Whether, on the facts and circumstances of the case, and having regard to the provisions of section 17(3)(ii) of the Income-tax Act, 1961, the amount of Rs. 27,948 representing the interest on the amount of the assessee's own contributions to an unrecognised provident fund was assessable under the residuary section 56 of the said Act?"

The High Court answered that question in the negative and in favour of the assessee. While it came to the conclusion that the receipt in question cannot be considered as salary as defined in section 17, in its view the same was exempt from payment of tax in view of section 17(3)(ii). The Commissioner is challenging the above conclusion.

The receipt of Rs. 27,948 is undoubtedly an income as defined by section 2 (24). The receipt of an interest on any investment is a gain made by the investor and therefore the same is "income". The next question is whether the said income is exempt from tax or if it is not exempt, under what head the same has to be brought to tax?

Section 14 of the Act gives the heads of income. They are : (A), Salaries; (B) Interest on securities; (C) Income from house property; (D) Profits and gains of business or profession; (E) Capital gains and (F) Income from other sources.

The salaries are brought to tax under section 15 and "the income from other sources" is brought to

tax under section 56. In this appeal we are not concerned with the other heads of income. "Salary" is defined in section 17 as including any "profit in lieu of or in addition to any salary or wages" (section 17(1)(iv)). Sub-section (3) of section 17 says :

"Profit in lieu of salary' includes -

(ii) any payment... due to or received by an assessee from an employer or a former employer or from a provident or other fund (not being an approved superannuation fund), to the extent to which it does not consist of contributions by the assessee or interest on such contributions."

The contributions to recognised provident funds are dealt with by other provisions of the Act. Herein we are concerned with the contribution to an unrecognised provident fund. The learned judges of the High Court opined that the receipt by the assessee with which we are concerned is exempt from the payment of tax in view of section 17 (3) (ii). In our opinion they were clearly in error in arriving at that conclusion. Deductions from the salaries are dealt with by section 16. In view of section 17 (1) (iv), all receipts are profits in lieu of salary have to be considered as salary. But then the question is what is meant by "profits in lieu of salary". In defining the expression "profits in lieu of salary", the legislature excluded from the scope of that expression any payments received by the assessee from a provident fund, his own contributions to the fund or any interest on such contributions. From that it follows that the receipt of R. 27,948 by the assessee in the relevant accounting year cannot be consid

In our opinion, the meaning of section 17(3)(ii) is plain and unambiguous. Hence, there is no need to call into aid any of the rules of construction as was sought to be done by the High Court.

The respondent was not represented before this court. We are obliged to Mr. T. A. Ramachandran for acceding to our request to appear on his behalf as amicus curiae and assist us at the time of hearing of the appeal.

For the reasons mentioned above we allow this appeal, discharge the answer given by the High Court and answer the question referred to the High Court in the affirmative and in favour of the department. Under the circumstances of the case we make no order as to costs.

Appeal allowed.

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