

Commissioner of Income-Tax, West Bengal I

Vs

K. K. Roy

Civil Appeal No. 1731 of 1968

(K.S. Hegde, A.N. Grover JJ)

11.08.1971

JUDGMENT

HEGDE J. -

The question for consideration in this appeal by certificate is "whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the sum of Rs. 50,000 grossed up to Rs. 1,00,301 was a capital receipt and not revenue receipt in the hands of the assessee."

The material facts of the case are as follows :

The assessee, an individual, was serving M/S. Airways (India) Ltd. as a manager in the year 1945. Two years thereafter he was appointed as the managing director of that company and he continued to hold that post till the termination of his services by the said company. His termination of the service became necessary as M/s. Airways (India) Ltd. was acquired in pursuance of the policy of nationalisation of airways. Under those circumstances the board of directors passed a resolution deciding to pay a sum of Rs. 50,000 to the assessee as a compensation for termination of his services. This amount was sought to be brought to tax by the Income-tax Officer in the assessment year 1954-55 - the relevant accounting year being the financial year 1953- 54. The assessee contended that the sum was not liable to tax as the receipt in question was a capital receipt. That contention was rejected by the Income-tax Officer and the decision of the Income-tax Officer was upheld by the Appellate Assistant Commissioner. But on a further appeal being taken by the assessee to the Income-tax Appellate Tribunal, the Tribunal allowed the contention of the assessee. It held that the receipt in question was a capital receipt. At the instance of the Commissioner the question set out earlier was referred to the High Court of Calcutta for its opinion. The High Court answered that question in favour of the assessee. Thereafter, this appeal has been brought by the Commissioner after obtaining a certificate from the High Court.

In our opinion, this appeal is a wholly frivolous one and the Commissioner was not justified in wasting public funds in filing such appeals. The point in issue here is covered by several decisions of this court. It would suffice if we refer to the decision of this court in Commissioner of Income-tax v. E. D. Sheppard. This court has been consistently holding that the compensation of the type with which we are concerned in this appeal are capital receipts.

In the result this appeal is dismissed with costs.

Appeal dismissed.

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