KERALA HIGH COURT

Commissioner of Income Tax

Vs

Travencore Tea Estates Co. Ltd

I.T.R. 19 of 1978

(Gopalan Nambiyar, C.J. and Balagangadharan Nair, J.)

01.01.1980

JUDGMENT

Gopalan Nambiyar, C.J.

1. This is a reference at the instance of the Commissioner of Income-tax, Ernakulam. The following question of law has been referred for our determination, namely:

> "Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the expenses on the maintenance of the buildings owned by the company and given rent-free to the employees cannot be considered for the purpose of disallowance under section 40(a)(v) of the I.T. Act, 1961?"

The assessee is a limited company running a tea estate. To six of its employees, the assessee provided rent-free accommodation. The buildings thus provided are owned by the assessee. The assessee also incurred certain expenses on the maintenance and upkeep of those buildings. These have been exhibited in the form of a chart in the statement of the case as follows:

"Name	**Education allowance**	**Value of rent free accommodation considered for personal income-tax purposes**	**Upkeep of buildings**	**Total**
	Rs.	Rs.	Rs.	Rs.

Mr. G.B. Shuttleworth	14480	1960	5028	21468
Mr. H.D. Dhunjoobhoy	-	1960	4957	6917
Mr. George Joseph	-	1960	4821	6781
Mr. P.O. Machiah	-	1960	5159	7119
Mr. R.P. Boson	-	1470	3921	5391
Mr. K. Jayakumar	-	1092	4747	5839"

The ITO was of the view that to the extent to winch the total expenses shown in the last column was in excess of 1/5th of the salary of the respective employees, a disallowance had to be made under section 40(a)(v). This worked out to Rs. 14,555. The assessee appealed to the AAC. That officer, following the order of the Tribunal in another case, held that the expenses on the repair and maintenance of the bungalows cannot be included as a perquisite. He allowed the assessee's appeal. There was a further appeal by the department to the Appellate Tribunal. The only point in controversy before the Tribunal which had to be dealt with was of the expenses on the upkeep of the buildings. The Tribunal considered the provisions also. It was of the opinion that the expression " employee " is qualified by the word " such ". It would, therefore, refer to the type of employees which appear in the earlier part of the section. That earlier part of the section has made it clear that the employee must have had some benefit or amenity arising out of the expenditure. Unless there was such benefit arising directly out of the expenditure, the Tribunal took the view that Section 40(a)(v) cannot be applied. The maintenance expenses in respect of the buildings does not give the employee any benefit or amenity. Whether the building is occupied or not, the company, as the owner, has to incur expenses on maintenance and repairs. There was no special amenity or benefit enjoyed by the employee merely because the building was maintained by the company. There was no evidence before the Tribunal to show that any special repair was done to suit the convenience of the employee. The Tribunal, therefore, found that there was no benefit or amenity derived by the employee by the expenses incurred on the maintenance of the buildings. So, such expenses had to be excluded, which meant that the addition made under section 40(a)(v) had to be deleted. The question of law was, therefore, referred.

2. Section 40(a)(v) of the Act reads thus :

" Notwithstanding anything to the contrary in sections 30 to 39, the following amounts shall not be deducted in computing the income chargeable under the head ' Profits and gains of business or profession ',--

(a) in the case of any assessee--.....

(v) any expenditure which results directly or indirectly in the provision of any benefit or amenity or perquisite, whether convertible into money or not, to an employee (including any sum paid by the assessee in respect of any obligation which but for such payment would have been payable by such employee) or any expenditure or allowance in respect of any assets of the assessee used by such employee either wholly or partly for his own purposes or benefit, to the extent such expenditure or allowance exceeds one-fifth of the amount of salary payable to the employee, or an amount calculated at the rate of one thousand rupees for each month or part thereof comprised in the period of his employment during the previous year, whichever is less:....."

As the Tribunal pointed out, the significant part of the provision is the expression "such" which qualifies the word "employee". In the context, and according tO the rules of grammar, this can only refer to the employee who has been described earlier. We should, therefore, turn to the earlier description of the employee. That we get in the earlier part of the section as an employee who enjoys the benefit of an expenditure which results directly or indirectly in the provision of any benefit or amenity or perquisite whether convertible into money or not. The question then is : whether the expenses on the upkeep of buildings would satisfy the provision in Section 40(a)(v) of the Act; or, in other words, whether the expenses on the upkeep of the buildings would result directly or directly in the provision of any benefit or amenity or perquisite to the employee. The Tribunal held that it would not and we think that, in the circumstances, the Tribunal was correct. The second type of expenses provided for, in the section, is expenses in respect of any assets of the assessee used by such employee. In relation to this second type of expenses, again, we think the view taken by the Tribunal was correct. The Tribunal was of the opinion that the asset over which certain expenses had been incurred by the assessee, should be used by the employee. The employee referred to in the earlier part of the section has been stigmatized with respect to one requirement, i.e., that he should have been the beneficiary of the expenditure or he should have derived an amenity or "perquisite from the expenditure. Neither of those stands satisfied with respect to the expenses on the maintenance of the buildings. It does not, therefore, fall under the section. This was the view taken by the Tribunal and we think the Tribunal was right. We answer the question referred in the affirmative, i.e., in favor of the assessee and against the revenue. There will be no order as to Costs.

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