Commissioner of Income-tax Vs. B. Ghosal

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Court : Kerala

Decided On : Feb-27-1980

Reported in : (1980)18CTR(Ker)197; [1980]125ITR744(Ker)

Judge : Balakrishna Eradi, C.J. and; Balagangadharan Nair, J.

Acts : Income Tax Rules, 1962 - Rule 2A; Income Tax Act, 1961 - Sections 10(13A) - Schedule - Rules 2, 4, 5 and 5(4)

Appeal No. : Income-tax Reference No. 116 of 1978

Appellant : Commissioner of Income-tax

Respondent : B. Ghosal

Advocate for Def. : K.V.R. Shenoi,; K.A. Nayar and; P. Balachandran, Adv

Advocate for Pet/Ap. : P.K. Ravindranatha Menon, Adv.

Judgement :

Balakrishna Eradi, C.J.

1. The Income-tax Appellate Tribunal, Cochin Bench (hereinafter called 'the Tribunal') has referred to this court under Section 256(1) of the Income-tax Act, 1961 (for short ' the Act ') the following question :

' Whether, on the facts and in the circumstances of the case, and for the purpose of Section 10(13A) of the Income-tax Act, 1961, 'salary' includes ' bonus ' '

2. The relevant facts as can be gathered from the statement of the case may be briefly stated thus I The assessee, an individual, is an employee of M/s. Harrisons & Crossfield Ltd. The assessment year with which we are concerned is 1975-76 for which the relevant accounting period is the year ended March 31, 1975. During the said period the assessee had received Rs. 38,110 by way of salary, dearness allowance and bonus. Out of the said amount, Rs, 4,410 represented the bonus received by the assessee from his employer. The assessee had also received from the employer during the accounting period an amount of Rs. 4,200 as house rent allowance. The actual rent paid by him during that year was Rs. 4,350. Section 10(13A) of the Act provides for grant of exemption in respect of house rent allowance subject to the limits prescribed by the Rules. The relevant rule relating to the matter is Rule 2A of the I.T. Rules, 1962. That rule reads :

' 2A, The amount which is not to be included in the total income of an assessee in

respect of the special allowance referred to in Clause (13A) of Section 10 shall be-

(a) the actual amount of such allowance received by the assessee in respect of the relevant period ; or

(b) the amount by which the expenditure actually incurred by the assessee in payment of rent in respect of residential accommodation occupied by him exceeds one-tenth of the amount of salary due to the assessee in respect of the relevant period ; or

(c) an amount equal to--

(i) where such residential accommodation is situate at Agra, Ahmedabad, Allahabad, Amritsar, Bangalore, Bombay, Calcutta, Cochin, Coimbatore, Delhi, Hyderabad, Indore, Jabalpur, Jaipur, Kanpur, Lucknow, Madras, Madurai Nagpur, Patna, Poona, Sholapur, Srinagar, Surat, Trivandrum, Vadodara (Boroda) or Varanasi (Banaras), one-fifth of the amount of salary due to the assessee in respect of the relevant period, and

(ii) where such, residential accommodation is situate at any other place, one-tenth of the amount of salary due to the assessee in respect of the relevant period ; or

(d) a sum calculated at the rate of Rs. 400 per month in respect of the relevant period,

whichever is the least,

Explanation--In this rule-

(i) ' salary ' shall have the meaning assigned to it in Clause (h) of Rule 2 of Part A of the Fourth Schedule;

(ii) ' relevant period ' means the period during which the said accommodation was occupied by the assessee during the previous year.'

3. It will be seen that under this rule the limit for the grant of exemption in respect of house rent allowance is to be the least of the amounts calculated in accordance with the provisions contained in Clauses (a) to (d). For the purposes of working out the amount under Clauses (b) and (c) it becomes relevant to determine what amount was due to the assessee as salary in respect of the relevant period. Under the Explanation to the rule the expression ' salary ' is to be given the meaning assigned to it in Clause (h) of Rule 2 of Pt. A of the Fourth Schedule to the Act. We shall, therefore, now turn to the definition of ' salary ' contained in Clause (h) of Rule 2 of Pt. A of the Fourth Schedule. That definition is in the following terms :

' (h) 'salary' includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.'

4. Thus, what we find is that Clause (h) does not provide a conceptual definition of ' salary ' but merely lays down that dearness allowance shall be treated as falling within the scope of the expression if the terms of employment so provide and that no other type of allowance or perquisite shall be treated as forming part of salary.

5. The assessee contended before the ITO that for the purposes of Clauses (b) and (c) of Rule 2A the amount of bonus received by him should not be treated as forming part of bis ' salary '. The ITO did not accept this contention and hence he computed the amount in respect of which exemption could be allowed to the assessee as being the quantum of rent paid by the assessee in excess of 10 per cent, of his salary inclusive of bonus by applying Clause (b) of Rule 2A. Accordingly, the ITO allowed to the assessee the benefit of exclusion from the total income only in respect of an amount of Rs. 540 under Section 10(13A).

6. The assessee carried the matter in appeal before the AAC of Income-tax, Ernakulam. The AAC allowed that appeal holding that, as per the terms of employment, only dearness allowance will be included in the salary of the assessee and bonus could not be treated as part of the salary. The department preferred an appeal before the Tribunal but the Tribunal confirmed the order of the AAC as per its order dated February 18, 1978. On interpreting the relevant provisions contained in the Fourth Schedule to the Act the Tribunal was of opinion that, for the purposes of those provisions, the expression ' salary ' would not include bonus and, since the definition of 'salary' contained in the Fourth Schedule is made applicable for the purposes of Rule 2A, bonus cannot be treated as part of the ' salary ' while determining the quantum of benefit to be allowed to an assessee under the said rule. On the motion made by the department the Tribunal has thereafter referred the question of law to this court as arising out of its order.

7. A reference to Clause (h) of Rule 2 of Part A of the Fourth Schedule to the Act wherein the expression ' salary ' has been defined and which definition alone is declared to be relevant for the purposes of Rule 2A (vide Explanation to the said rule) shows beyond doubt that it was the clear intention of Parliament to restrict the scope of the said expression to amounts paid by the employer to an employee by way of remuneration or recompense for the services rendered by the latter, such payment being made pursuant to the terms of employment. This is clearly indicated by the stipulation contained in Clause (h) that dearness allowance is liable to be treated as forming part of the salary only if the terms of employment so provide. In other words, even dearness allowance is not to be regarded as part of the salary unless there is a clear stipulation contained in the contract of employment that such allowance shall form part of the salary. All other allowances and perquisites are expressly excluded from the scope of the expression 'salary'. It is against this background that we have to consider whether bonus paid to an employee will fall within the scope of the expression ' salary ' as defined in Rule 2(h). It is true that the concept of bonus has not been static and that, besides profit-based bonus, production bonus and attendance bonus, there exist also other forms such as customary traditional or contractual bonus. But the distinctive feature of all such payments is that, save in exceptional cases which may stand on a different legal footing, bonus is not ordinarily paid under the terms of the contract of employment as part of the remuneration due to the employee for the services rendered by him. It is now well settled by the decisions of the Supreme Court that bonus is not a deferred wage but it is something paid to the employee in addition to wages. Such being the position, we find it difficult to uphold the contention of the counsel for the revenue that bonus is paid to an employee as part of his ' salary ' as defined in Rule 2(h).

8. The scope of the definition contained in Clause (h) of Rule 2 came up for consideration before the Supreme Court in Gestetner Duplicators P. Ltd. v. CIT : [1979]117ITR1(SC) . After elaborately referring to the meaning of the expression '

salary ' as given in the leading dictionaries, the Supreme Court held that, conceptually, there is no difference between salary and wages, both being a recompense for work done or services rendered. It was further held that in cases where the remuneration or recompense for the services rendered by an employee is determined at a fixed percentage of turnover achieved by him, such remuneration or recompense will partake of the character of salary only if the terms of the contract of employment specifically provide for the payment of such remuneration or recompense. We regard the above pronouncement by the Supreme Court as clear authority for the position that only amounts paid to an employee under the terms of the contract of employment by way of remuneration or recompense for services rendered by such employee can be regarded as falling within the expression 'salary' as defined in Rule 2(h) of Pt. A of the Fourth Schedule to the Act.

9. Counsel for the revenue drew our attention to the decision of a Division Bench of the Madras High Court in CIT v. India Radiators Ltd. : [1976]105ITR680(Mad) , where the view has been taken that after the enactment of the Payment of Bonus Act, 1965, bonus paid to an employee is part of his salary or wages. With respect, we do not find it possible to agree with the said view. The question whether a particular payment made to an employee constitutes 'salary' for the purposes of Rule 2A will have to be determined only by reference to the definition of that expression as contained in Rule 2(h) of Pt. A of the Fourth Schedule to the Act. On a close study of the said rule in conjunction with Rules 4 and 5 of the same Part in the same Schedule, it appears to us to be perfectly clear that bonus cannot be regarded as falling within the scope of the expression 'salary' as defined in Clause (h) of Rule 2. Clauses (b) and (c) of Rule 4 contain a clear indication that the expression 'salary' takes in only periodical payments made by the employer to the employee during a year by way of remuneration. Clause (4)(b) of Rule 5 empowers the Commissioner to relax the provisions of Rule 4(c) and to permit the crediting by the employers to the individual accounts of the employees of the periodical bonuses or other contributions of a contingent nature. If bonus were to form part of the salary of the employee, the proportionate contribution has to be automatically credited by the employer and there is absolutely no necessity for this provision for relaxation of the rules. It is also significant that bonus is specifically referred to as a contribution of a contingent nature.

10. We are, therefore, unhesitatingly of the opinion that the Tribunal was right in holding that bonus paid to the assessee did not form part of his 'salary'.

11. The question referred is accordingly answered in the negative, that is, in favour of the assessee and against the department. The parties will bear their respective costs.

12. A copy of this judgment, under the seal of the court and the signature of the Registrar, will be forwarded to the Tribunal, as required by law.