IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 87 OF 2000

The Commissioner of Income Tax. ..Appellant.
V.
Mr. Jaydev H. Raja. ..Respondent.

Mr. Arvind Pinto for the Appellant.
None for the Respondent.

CORAM : J.P. DEVADHAR &
M.S. SANKLECHA, JJ.

DATE : 25TH SEPTEMBER, 2012.

PC:

According to the revenue the following questions of law arise out of the order of the ITAT dated 30/3/1999.

a) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that tax borne by the employee is not part of the pay?

b) Whether on the facts and circumstances of the case and in law the Tribunal was justified in holding that notional interest on interest free deposit made for accommodation is not part of perquisite of the assessee?

2) The assessment year involved herein is AY 1994-1995.

3) The respondent-assessee a resident but not ordinarily resident individual was an employee of Coca-Cola Inc. USA and had income under the head “Salalries”. Under the Tax Equalization Policy framed by the said company, the assessee's tax liability arising out of his foreign assignment was to be borne by the company but restricted only to the extent of liability arising out of such foreign assignment. As the assessee had foreign assignment in India during the assessment year in question, the company under its tax equalization policy was liable to reimburse the tax payable on total salary which the assessee was entitled to receive in India.

4) In the assessment year in question the assessee had returned income of Rs.1.13 crores and paid tax there on the said income at Rs.50.00 lakhs. Since the assessee had received Rs.77.00 lakhs in India and the tax payable thereon was Rs.35.00 lakhs which was to be reimbursed by the employer, the assessee

had included Rs.35.00 lakhs to the salary income of Rs.77.00 lakhs and offered Rs.113.00 lakhs (round figure) to tax. Though tax on Rs.113.00 lakhs at Rs.50.00 lakhs was paid, the assessee claimed that out of Rs.50.00 lakhs only Rs.35.00 lakhs was includible in the total income and not the balance amount of Rs.15.00 lakhs. The Assessing officer rejected the contention of the assessee, CIT(A) upheld the decision of the Assessing Officer.

5) On further appeal, the ITAT in Paragraph 11 of its order has recorded a finding that the total salary received by the assessee in India was Rs.77.00 lakhs on which the tax payable at the maximum rate of 44.8% comes to Rs.35.00 lakhs. Since the assessee under the Tax Equalization Policy was entitled to get reimbursement of the tax payable on the amount of Rs.77.00 lacs, the assessee was justified in computing the salary income at Rs.113.00 lakhs (Rs.77.00 lacs plus Rs.35.00 lacs) which almost tallies with the income declared by the assessee. The Tribunal has further recorded that though the assessee had paid tax amounting to Rs.50.00 lakhs, the assessee was entitled to reimbursement of tax amounting to Rs.35.00 lakhs and the

balance Rs.15.00 lakhs was borne out of the salary income received by the assessee in India. The Tribunal has recorded a finding that the confusion has arisen, because, the assessee in his computation had added Rs.50.00 lakhs as income and deducted Rs.15.00 lakhs from the income, when in fact the said amount of Rs.15.00 lakhs was not received from the company but paid out of the salary amount received in India. In other words, though the assessee had paid tax of Rs.50.00 lakhs, since the assesses was entitled to reimbursement of Rs.35.00 lakhs from the Company, the salary income (Rs.77.00 lakhs) received by the assesses had to be enhanced by Rs.35.00 lakhs only and not the balance Rs.15.00 lakhs which is paid by the assesses from the salary income. In these circumstances, the Tribunal was justified in holding that the tax amounting to Rs.15.00 lakhs paid by the assessee from the salary income (not reimbursed by the company) could not be added to that income of the assessee. Accordingly the first question cannot be entertained.

6) As regards the second question is concerned, the Tribunal has allowed the claim of the assesee by following the

decision of this Court in the case of M.A.E. Paes reported in 230 ITR 60. Accordingly, the second question cannot be entertained.

7) The appeal is accordingly dismissed with no order as to costs.

(M.S. SANKLECHA, J.) **(J.P. DEVADHAR, J.)**