**RESERVED**

(1) **INCOME TAX APPEAL NO. 20 OF 2001**

Sandeep Kohli ……..Appellant

Versus

Commissioner of Income Tax, Lucknow …….. Respondent

(2) **INCOME TAX APPEAL NO. 21 OF 2001**

Sandeep Kohli ……..Appellant

Versus

Commissioner of Income Tax, Lucknow …….. Respondent

*connected with*

(3) **INCOME TAX APPEAL NO. 22 OF 2001**

Sandeep Kohli ……..Appellant

Versus

Commissioner of Income Tax, Lucknow …….. Respondent

(4) **INCOME TAX APPEAL NO. 23 OF 2001**

Sandeep Kohli ……..Appellant

Versus

Commissioner of Income Tax, Lucknow …….. Respondent

(5) **INCOME TAX APPEAL NO. 24 OF 2001**

Sandeep Kohli ……..Appellant

Versus

Commissioner of Income Tax, Lucknow …….. Respondent

(6) **INCOME TAX APPEAL NO. 25 OF 2001**

Vishal Kohli (dead)
substituted vide order dated 3.4.2012
1/1. Smt. Madhulika Kohli
1/2. Miss Mallika Kohli
1/3. Master Rehan Kohli

……..Appellants

Versus

Commissioner of Income Tax, Lucknow …….. Respondent

(7) **INCOME TAX APPEAL NO. 26 OF 2001**

Vishal Kohli (dead)
substituted vide order dated 3.4.2012
1/1. Smt. Madhulika Kohli
1/2. Miss Mallika Kohli
1/3. Master Rehan Kohli

……..Appellants

Versus

Commissioner of Income Tax, Lucknow ……… Respondent

(8) **INCOME TAX APPEAL NO. 27 OF 2001**

Vishal Kohli (dead)
substituted vide order dated 3.4.2012
1/1. Smt. Madhulika Kohli
1/2. Miss Mallika Kohli
1/3. Master Rehan Kohli

……...Appellants

Versus

Commissioner of Income Tax, Lucknow ……… Respondent

(9) **INCOME TAX APPEAL NO. 28 OF 2001**

Vishal Kohli (dead)
substituted vide order dated 3.4.2012
1/1. Smt. Madhulika Kohli
1/2. Miss Mallika Kohli
1/3. Master Rehan Kohli

……...Appellants

Versus

Commissioner of Income Tax, Lucknow ……… Respondent

(10) **INCOME TAX APPEAL NO. 29 OF 2001**

Vishal Kohli (dead)
substituted vide order dated 3.4.2012
1/1. Smt. Madhulika Kohli
1/2. Miss Mallika Kohli
1/3. Master Rehan Kohli

……...Appellants

Versus

Commissioner of Income Tax, Lucknow ……… Respondent

*******

**Hon'ble Rajiv Sharma, J.**
**Hon'ble Vinay Kumar Mathur, J.**

Heard Sri N.K. Seth, Senior Advocate, assisted by Sri Ashish Chaturvedi, learned Counsel for the appellant and Sri D.D. Chopra, learned Counsel for the respondent.

Since in the above captioned income-tax appeals, common question of law and facts, relating to two different Assessees, namely, Sandeep Kohli and Vishal Kohli, who were Directors of M/s Kohli Brothers, Colour Lab Private Ltd., Lucknow, are being involved, as such, all the income tax appeals have been clubbed together and are being disposed of by a common order.

Through the above captioned income tax appeals under Section 260-A of the Income Tax Act, 1961 [hereinafter referred to as the ***"Act"***], the appellant challenges the order dated 29.6.2001 passed by the Income Tax Appellate Tribunal, Lucknow Bench, Lucknow [hereinafter referred to as the ***"Tribunal"***] for the different Assessment Years, whereby the Tribunal dismissed the appeals preferred by the assessees/appellants. The unsuccessful appellant has also assailed the order dated 16.9.1996 passed by the Assessing Officer as also the judgment and order dated 11.4.1997 passed by the Commissioner of the Income Tax.

In nutshell, the facts of the case are that assessees/appellants, namely, Sandeep Kohli and Vishal Kohli, were Directors of M/s Kohli Brothers Colour Lab Private Limited [hereinafter referred to as the ***"Company"***], which is incorporated under the provisions of the Companies Act, 1956. Appellants are working for the Company under the supervision and control of the Board of Directors of the Company as stipulated under the Articles of Association of the Company. For rendering services of the Company, appellants received remuneration as per the resolution passed by the Board of Directors of the Company. On perusal of the Assessment orders pertaining to the Assessment Years 1986-1987 to 1992-1993, it would be evident that appellants received remuneration at the rate of Rs.2500/- per month, which has been under the head "Salaries" for the purpose of Income Tax. Subsequently, the Board of Directors, in its meeting dated 15.2.1993, enhanced the remuneration of the appellant to Rs.4000/- per month and as such, the appellants filed their income tax returns declaring the income accrued on account of remuneration, as chargeable under the head "Salaries" under Section 15 of the Income Tax Act, after claiming standard deductions under Section 16 of the Act.

On receipt of the said income tax returns, the Assessing Officer issued notice under Section 143 (2) of the Income Tax

Act, 1961 [hereinafter referred to as the ***"Act"***] to the appellants/asseeesses, to which appellants/assessees appeared through his Counsel before the Assessing Officer and filed their reply. The Assessing Officer, vide order dated 21.12.1995, disallowed the standard deductions claimed by the appellants/ assessees under Section 16 (1) of the Act.

Against the order dated 21.12.1995, the assessees/ appellants preferred appeals before the Commissioner of Income Tax (Appeals), Lucknow, who, vide order dated 22.7.1996, dismissed the appeal and confirmed the order passed by the Assessing Officer. Feeling aggrieved, the assessees/appellants preferred appeals before the Income Tax Appellate Tribunal, who, vide order dated 29.6.2001, dismissed the appeals of the appellant by a common order on the ground that there being no relationship of master and servant between the company and the Assessee and as such, the remuneration paid to the Director cannot be treated as salary and the Assessee is not entitled to the standard deductions claimed by them under Section 16 (C) of the Act. Hence appellants have approached this Court by way of appeals.

It has been pointed out by the learned Counsel for the parties that all the income tax appeals, referred to hereinabove, were admitted on the substantial question of fact as formulated in the memo of the appeal but after hearing the Counsel for the parties, a co-ordinate Bench of this Court, vide order dated 3.4.2012, formulated two substantial questions of law for adjudication of the case, which are as under :

> *"1. Whether there can be a relationship of Employer and Employee between the Company and its Director and whether the appellant as a Director is entitled for deduction under the Head of Salary keeping in view the Sections 15 and 16 (1) of the Income Tax Act ?*
>
> *2. Whether the revenue is estopped from changing its stand while recording a finding on the present*

*assessment year different than the stand of earlier-assessment year ?"*

Sri N.K. Seth, Senior Advocate, appearing on behalf of the appellants has submitted that appellants being the Directors of the Company had discharged/acted in dual capacity viz. when the Director sit in the meeting of Board of Directors, he acts as a Director and when he is executing and doing the affairs of the Company on day-to-day basis transacting business of the company, he acts as an employee of the Company. For rendering services in the company, the appellants received remuneration as per the resolution passed by the Board of Directors of the Company.

Sri Seth submits that as per the Article of Association of the Company, the Board of Directors have control and supervision and for carrying on the business operations of the Company, the provision of remuneration has been provided which is to be fixed by the Board of Directors. His submission is that as per Clause 58 of the Article of Association, the relationship of employer and employee between the Company and its Director exists and since the element of the employer and employee runs in the relationship between a Director and the Company, as such, the remuneration fixed by the Board of Directors for the services rendered by the Director is taxable under Section 15 of the Act under the head "Salaries". He submits that as per Section 16 of the Act, the income chargeable under the head "Salaries" shall be computed after making the standard deductions and as such, the appellant filed its income tax returns declaring the income accrued on account of remuneration received, as chargeable under the head "Salaries" under Section 15 of the Act, after claiming standard deductions under Section 16 of the Act.

Sri Seth further submits that from the Assessment orders pertaining to the Assessment Years 1986-1987 to 1992-1993, the remuneration received by the appellant amounting to Rs.2500/- per month has been charged under the head "Salaries" for the purpose of Income Tax but ignoring this fact, the Assessing Officer, on receipt of the income tax returns of the appellant, issued notice under Section 143 (2) of the Act, to which appellants submitted reply but without considering the reply tendered by the appellants, the Assessing Officer, vide order dated 16.9.1996, disallowed the standard deductions claimed under Section 16 (1) of the Act, assessing the income and the remuneration received from the Company as income from other sources.

Elaborating his submission, Sri Seth has submitted that the First Appellate Authority as well as the Tribunal have failed in not considering the fact that there being relationship of the master and servant between the Company and the Assessee, dismissed the appeal of the appellants by holding that the remuneration paid to the Director cannot be treated as Salary and the Assessee is not entitled to the standard deductions claimed by him under Section 16 (C) of the Act. He submits that the remuneration received by the assessee was for managing the Company's business, as such, appellants are entitled for standard deductions under Section 16 (C) of the Act. In support of his submissions, Sri Seth has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Ram Prasad Versus Commissioner of Income-Tax, New Delhi*** [1986 ITR 122 (S.C.), ***Justice Deoki Nandan Agarwala Versus Union of India and another*** [237 ITR 872 (SC); the judgment of the Bombay High Court rendered in the case of ***Commissioner of Income Tax, Bombay Versus L. Armstrong Smith*** [14 ITR 606]; judgment of the Karnatka High Court rendered in the case of ***Commissioner of Income Tax Versus M.S.P. Rajas***; and judgment of this Court rendered in the case of ***The Commissioner of Income Tax-I Versus M/s Goel Builders*** passed in Income Tax Appeal No. 127 of 2005 along with connected appeals decided on 24.5.2010.

Per contra, Sri D.D.Chopra, learned Counsel for the respondent has submitted that the impugned order passed by the Tribunal is correct and just and there is no illegality and infirmity insofar as while upholding the order passed by the Assessing Officer and the First Appellate Authority, the

Tribunal had concluded that the Director appointed as Whole Time Director cannot be considered to be an employee or servant and further the relationship of master and servant is not proved between the company and the assessees and as such, the remuneration paid to the Director cannot be treated as Salary and the appellants are not entitled to the deduction under Section 16 (1) of the Act.

Elaborating his submission, Sri Chopra submits that the Tribunal, before concluding, has considered the guidelines laid down by the Hon'ble Supreme Court in the case of ***Ram Prasad Versus CIT*** (1972 86 ITR 122) and applying the test laid down in the case of ***Sardar Harpreet Singh Versus CIT*** 187 ITR 679 (Allahabad), has held that for establishing master and servant relationship, it was essential for the appellants to prove that Sandeep Kohli was appointed as employee i.e. whole time director on a fixed salary for doing specific work or for discharging certain functions for and on behalf of the company; and in the exercise of such functions or duties, he was subject to the supervision and control of the Board of Directors of the Company. Furthermore, the Tribunal, after verifying from the Memorandum and Article of Association and the Resolution of the Board of Directors, held that the asseessee has not filed any other document on the issue relating to the employment of Sandeep Kohli as worker or employee or agent of the Company. There was neither any appointment letter nor an agreement or correspondence for appointing Sandeep Kohli as Director or Whole Time Director.

Sri Chopra further submits that in the resolution, there was no mention of the duties and functions assigned or allotted to Sandeep Kohli. Furthermore, nothing in the said resolution is said about the supervision and control which was to be exercised in relation to the duties of Sandeep Kohli and there is no record showing the details of actual services rendered by Sandeep Kohli.

While relying upon the judgment of the Hon'ble Supreme Court in the case of ***Ram Prasad (Supra),*** Sri Chopra submitted that a director of a company is not a servant but an agent inasmuch as the company cannot act in its own person but has only to act through Directors who qua the Company have the relationship of an agent with the Company. He has also relied upon the judgment of the Orissa High Court in the case of ***CIT Versus Smt. Shanti Devi*** [(1993) 199 ITR 800 (Ori)]; judgment of this Court in the cases of ***Sardar Harpreet Singh Versus CIT*** [1991 (187) ITR 679 (All)]; and **CIT Versus Lakshmipati Singhania** [1992 ITR 598 (Alld.)]

We have heard learned Counsel for the parties and perused the records.

Clause 33 of the Article of Association provided that subject to the provisions contained in the Article of Association and limitation imposed by the Companies Act, 1956, the Director shall be entitled to exercise all such powers and to do all such acts and things as the Company is authorised to exercise and do. Clause 41 of the Article of Association provided that the Board of Directors shall have power to appoint, from time to time, any other person or persons to be Additional Director or Director but the total number of Directors shall not at any time exceed the maximum number fixed by the Articles. Clause 43 of the Article of Association provided that no Director shall retire by rotation until and otherwise decided by the Company in a general meeting. Clause 44 provided that each Director shall receive out of funds of the Company by way of remuneration, a sum not exceeding Rs.2500/- or any other amount as may be decided by the Board for each meeting of the Board or any Committee or Sub-Committee thereof attended by him in addition to his traveling, boarding and lodging and other expenses incurred. Clause 58 of the Article of the Association provided that the Board of Directors may also appoint one or more Whole Time Directors to look after and carry on day to day operations of the Company and their remuneration shall also be fixed by the Board. The Whole Time Directors shall work under the control and supervision of the Board of Directors. In case the Board does not appoint Managing Director, the Whole Time Director or Directors shall have powers as are conferred by the Articles on the Managing Director.

As averred above, a Director of a Company hold an office under the Company but as a Director, he is not a servant or an employee of a Company. However, there may be special term in the Article of Associations or there may be an independent contract which may bring a relationship between the Company and the Director and constitute a Director as an employee of the Company. In other words, on some occasions, a Director of the Company may be an employee but that he is an employee must not be merely on paper rather it should be proved and establish on record as a fact. In the instant case, the Tribunal has observed that there was no appointment letter or agreement specifically laying down the terms of the so-called appointment of the assessee/appellant as an employee/hold time Director. The only material placed before the Tribunal to prove the relationship of the employer and employee was in the form of Article of Association and resolutions dated 1.6.1991. The Tribunal further observed that in the said resolution, there is no mention of duties and functions assigned to the assessee/appellant. Thus, the appellants failed to establish the relationship of an employee and employer and this being so, the assessee was rightly assessed by the Income Tax Officer whereby he disclosed the claim for deduction under Section 16 (1) of the Act.

The Tribunal after considering the various case laws relied upon by the appellants, recorded a clear cut finding of fact that the Directors appointed as Whole Time Director cannot be considered to be the employee of the Company and approved the findings recorded by the Commissioner, Income Tax. Thus, the Appellate Authority, i.e. Commissioner of Income Tax (Appeals) as well as the Tribunal has recorded a concurrent finding of fact that the appellant has failed to bring on record any document to prove the relationship of Master and Servant between the assessee and the company.

It is pertinent to add that a finding of fact has been recorded by all the authorities below and as such it is not justified to reappraise the same. The above view is supported by the judgment rendered in 1993 (suppl.) (4) SCC 1 ***O.T.M.O.M. Meyyapa Chettiar Versus O.T.M.S.M. Kasi Viswanathan Chettiar and another.***

Further Hon'ble Apex Court in several decisions has held in explicit words that there should be judicial restraint while interfering with the concurrent finding of facts. The duty of the court is (a) to confine itself to the question of legality; (b) to decide whether the decision-making authority exceeded its powers; (c) committed an error of law; (d) committed breach of the rules of natural justice; and (e) reached a decision which no reasonable tribunal would have reached; or (f) abused its powers.

Thus, the finding of facts recorded by all the authorities cannot be altered merely by saying that these findings are perverse. The onus lies on the appellant to prove/establish that perversity has crept into while recording the findings by the Tribunal.

In view of above discussions, the question as framed is answered in the negative, i.e., in favour of the revenue and against the assessee.

All the income tax appeals are dismissed.

**Order Date : 19th July, 2012** [V.K. Mathur, J.][Rajiv Sharma, J.]
Ajit/-