

(1992) 02 AHC CK 0040

Allahabad High Court

Case No: Income-tax Reference No. 1085 of 1978

Surendra Kumar

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Feb. 12, 1992**Acts Referred:**

- Income Tax Act, 1961 - Section 2(22)

Citation: (1992) 105 CTR 123 : (1993) 199 ITR 418 : (1992) 65 TAXMAN 80**Hon'ble Judges:** M. Katju, J; A.N. Verma, J**Bench:** Division Bench**Advocate:** Bharatji Agarwal, for the Appellant;**Final Decision:** Dismissed

Judgement

M. Katju, J.

The following question has been referred to us by the Income Tax Appellate Tribunal, Delhi Bench, u/s 250(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the sum of Rs. 1 lakh was taxable as deemed income within the meaning of Section 2(22)(e) of the Income Tax Act, 1961 ?"

2. The relevant facts are that the assessee was the managing director of Messrs. Anchor Pressings Pvt. Ltd. The relevant assessment year is the assessment year 1972-75. In respect of the accounting year relevant to this assessment year, as it was found by the Income Tax authorities that Messrs. Anchor Pressings Pvt. Ltd. had advanced a sum of Rs. 1 lakh to the assessee on June 25, 1971, describing it as imprest or temporary loan. The income tax Officer added this amount to the assessor's income invoking Section 2(22)(e) of the Income Tax Act, 1961.

3. The assessee preferred an appeal to the Appellate Assistant Commissioner and it was dismissed and his further appeal to the Tribunal met with the same fate. On a

reference u/s 256(1) of the Income Tax Act, 1961, the matter has now come up before us.

4. Counsel for the assessee, Shri Bharatji Agarwal, has argued only one point, that is, that the Tribunal has not considered the liabilities while holding that the company had sufficient accumulated profits to advance the loan of Rs. 1 lakh. Section 2(22)(e) of the Income Tax Act defines dividend to include any payment by a company, not being a company in which the public are substantially interested of any sum made after May 31, 1967, by way of advance or loan to a shareholder to the extent to which the company in either case possesses accumulated profits. Thus, it is evident that the payment by the company to a shareholder can only be treated as dividend to the extent to which the company possesses accumulated profits. Shri Agarwal's argument is that in computing accumulated profits, the liabilities have also to be taken into account.

5. A perusal of the Tribunal's order shows that the Tribunal has observed " the argument that liabilities have not been taken into account has no force as, even if the liabilities subsisting on the date of payment were taken into account, there was still sufficient surplus to advance the loan of Rs. 1,00,000 ". This is a finding of fact recorded by the Tribunal. Unfortunately for the assessee, this finding has not been challenged by way of a specific question u/s 256(1). It is well-settled that a finding of fact of the Tribunal can be challenged only in a reference u/s 256 of the Income Tax Act by raising a specific question, vide Kanga and Palkhivala's Law and Practice of Income Tax, Eighth Edition, page 1547. All the necessary authorities on this point have been discussed in Kanga's book at page 1547 and it is unnecessary to refer to them in detail. The assessee should have framed a specific question as to whether the aforementioned finding of fact recorded by the Tribunal is based on no evidence or has been reached after ignoring relevant evidence, but no such question has been framed u/s 256(1) of the Income Tax Act by the assessee.

6. In view of the above, it is not possible for us to go into this question, and we have to accept the finding of fact recorded by the Tribunal that even if the liabilities are taken into account, there was still sufficient surplus to advance the loan of Rs. 1 lakh to be correct.

7. No other point has been argued in this reference. We accordingly, answer the question in the affirmative, in favour of the Revenue and against the assessee. The Revenue will be entitled to its costs which we assess at Rs. 250.