

(2001) 08 AP CK 0009

Andhra Pradesh High Court

Case No: R.C. No. 163 of 2000

Bharat Heavy Electricals Limited

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Aug. 28, 2001

Acts Referred:

- Income Tax Act, 1961 - Section 17(1), 17(2), 192, 201, 201(1)

Citation: (2001) 252 ITR 316

Hon'ble Judges: P.S. Narayana, J; B. Subhashan Reddy, J

Bench: Division Bench

Advocate: A.V. Krishna Koundinya, for the Appellant; J.V. Prasad, for the Respondent

Judgement

B. Subhashan Reddy, J.

Bharat Heavy Electricals Limited, a Government company, has its registered office at New Delhi. It has got one of its units at Ramachandrapuram, Medak District, Andhra Pradesh. The annual returns filed by the assessee-company indicates that its employees were in receipt of interest subsidy which was excluded from the respective salary receipts, for the purposes of computing the tax deductible from their salaries. When the assessee was asked to explain, it filed a reply on March 2, 1995, enclosing thereto a letter dated March 19, 1992 issued by the Income Tax Officer certifying that interest subsidy does not form a perquisite within the meaning of Section 17(2)(iv) of the Income Tax Act. But the Assessing Officer concluded that the assessee-company ought to have considered the interest subsidy as salary income and deducted tax at source u/s 192 of the Act on the whole salary income and since the employer failed to do so, he held that the assessee-company, an "assessee in default" in terms of Section 201(1) of the Act. Consequently, the tax, which was not deducted at source, clubbed with the interest for all the five years was arrived at Rs. 2,34,11,482. On appeal, the Commissioner of Income Tax, after detailed consideration of the contentions raised by the assessee, confirmed the action of the Assessing Officer and dismissed the appeal for all the five years by

common order dated September 19, 1995.

2. The further appeal to the Income Tax Appellate Tribunal met with the same fate.

3. The assessee-company then filed applications u/s 256(1) of the Income Tax Act seeking reference of the following questions :

"1. Whether, in the facts and circumstances of the case, the Income Tax Appellate Tribunal is correct in holding that the Income Tax Officer, Ward 5(6), Hyderabad, had jurisdiction to pass an order u/s 201 of the Income Tax Act, 1961 ?

2. Whether, in the facts and circumstances of the case, the Income Tax Appellate Tribunal is correct in holding that the interest subsidy is a perquisite within the meaning of Section 17(1)(iv) of the Income Tax Act, 1961?

3. Whether, in the facts and circumstances of the case, the Income Tax Appellate Tribunal is correct in holding that the interest subsidy is a part of salary and should have been included in the salary income for the purpose of working out tax deducted at source u/s 192 of the Income Tax Act, 1961 ?

4. Whether, in the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is correct in holding that the assessee-company is liable to pay tax on interest subsidy provided to its employees in accordance with the provisions of Section 201 of the Income Tax Act, though the assessee-company was under honest belief that such interest subsidy is not includable as perquisite ?

5. Whether, in the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is correct in holding that the Income Tax Officer can pass an order u/s 201 of the Income Tax Act inspite of the fact that the employees filed returns of income separately before the Assessing Officer having jurisdiction ?

6. Whether, in the facts and in the circumstances of the case, the Income Tax Appellate Tribunal, is correct in holding that the assessee-company, basing on various decisions and clarifications could not have come to bona fide view that interest subsidy is not includable as part of salary ?

7. Whether, in the facts and circumstances of the case, the Income Tax Appellate Tribunal is correct in holding that the provisions of Section 201 of the Income Tax Act are applicable where there was short deduction of tax at source when the provisions of Section 201 of the Income Tax Act refers to non-deduction of tax at source and non-payment of tax deducted ?

8. Whether, in the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is correct in holding that the decision of the Karnataka High Court in the case of P. Krishna Murthy v. CIT (W.P. No. 8726 of 1993 dated January 13, 1994), the clarification issued by the Chairman, Central Board of Direct Taxes, the clarification issued by the Income Tax Officer, Ward-5(7), Hyderabad, the order u/s 264 of the income tax Act, passed by the Commissioner of Income Tax, Andhra

Pradesh-I, Hyderabad, in the case of E.C.I.L. and the decision of the Income Tax Appellate Tribunal, Bangalore Bench, in the case of ITO v. Narsimha Swamy, could not have prompted the assessee from excluding the interest subsidy as salary income for the purpose of working of tax deducted at source u/s 192 of the Income Tax Act, 1961 ?"

4. But the Tribunal has referred only three questions to this court, which are as follows :

"1. Whether, in the facts and circumstances of the case, the Income Tax Appellate Tribunal is correct in holding that the interest subsidy is a perquisite within the meaning of Section 17(1)(iv) of the Income Tax Act, 1961 ?

2. Whether, in the facts and circumstances of the case, the Income Tax Appellate Tribunal is correct in holding that the interest subsidy is a part of salary and should have been included in the salary income for the purpose of working out tax deducted at source u/s 192 of the Income Tax Act, 1961 ?

3. Whether, in the facts and circumstances of the case, the Income Tax Appellate Tribunal is correct in holding that the assessee-company is liable to pay tax on interest subsidy provided to its employees in accordance with the provisions of Section 201 of the Income Tax Act, though the assessee-company was under honest belief that interest subsidy is not includable as perquisite ?"

5. The prime question is whether the interest subsidy is perquisite within the meaning of Section 17(1)(iv) of the Act. The answer with regard to questions Nos. 2 and 3 depends upon the outcome of the adjudication of the above prime question. A Division Bench of this court had an occasion to deal with the similar provisions in P.V. Rajgopal and Others Vs. Union of India and Others, , and incidentally, the assessee in the instant case and in the case referred to above, is the same. After extracting the facts and analysing several decisions and also considering the effect of Section 17(2)(vi), which was inserted by the Taxation Laws (Amendment) Act, 1984, but repealed by the Finance Act, 1985, it was held that the interest subsidy is not a perquisite and that no legal obligation lies on the employer to deduct tax at source. In fact, this case has got intricate connection with the case cited, as the same point arose for consideration regarding the liability or otherwise to deduct the tax at source and the same having been found affirmatively in favour of the assessee and having not been appealed against, has become final. In view of the ratio laid down in the above case, which has support of the law declared by the Supreme Court in V.M. Salgaocar and Bros. Pvt. Ltd. Vs. Commissioner of Income Tax, , the reference is answered in favour of the assessee and against the Department.