

(1990) 03 CAL CK 0035

Calcutta High Court

Case No: IT Ref. No. 178 of 1985

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

KULASINGHEE, A. HARITH.

RESPONDENT

Date of Decision: March 7, 1990**Citation:** (1992) 107 CTR 328**Hon'ble Judges:** Suhas Chandra Sen, J; Bhagabati Prasad Banerjee, J**Bench:** Full Bench

Judgement

BHAGABATI PRASAD BANERJEE, J. :

The Tribunal has referred the following question of law under s. 256(1) of the IT Act, 1961 :

"Whether, on the facts and in the circumstances of the case, The Tribunal was justified in law in holding that the value of rent-free accommodation provided to the assessee by his employer was exempt under s. 10 (14) of the IT Act ?"

2. The assessment year involved is 1980-81. Relevant year of account is the year ending 31st March, 1980. The facts as is evident from the statement of facts are as follows :

"The assessee, a commissioning engineer, is a permanent employee of M/s. John Brown Engineering (Clyde Bank) Ltd. Scotland, U.K. He came to India for installation of gas turbine of West Bengal State Electricity Board and stayed in India for a period of 231 days. While in India, he was provided rent-free accommodation by his employer for which exemption under s. 10(14) of the IT Act, 1961 was claimed on the ground that since the assessee came to India to perquisite as rent-free accommodation should be added to his total income as only temporary and not permanent accommodation was provided to him. In the assessment order the ITO has noted that during the course of hearing it could not be established as to why the assessee's assignment in India should be called tour and not definite posting

specially in view of the fact that M/s. John Brown Engg. Ltd. has a local office at Calcutta at 56A, Mirza Galib Street, Calcutta-16 under a resident manager. The ITO was of the view that the case of the assessee fell squarely within the definition perquisite which is specially excluded from the operation of exemption available under s. 10(14). The ITO was also of the view that the assessee was in India on a regular posting. So, the claim for exemption under s. 10(14) was disallowed and a sum of Rs. 13,796 was added as perquisite value of the rent free accommodation.

The matter was carried in appeal before the CIT(A) before whom it was submitted that the assessee had come to India in connection with the installation of gas turbine under West Bengal State Electricity Board and was not on regular posting as such. It was pointed out that under similar circumstances, the rent-free accommodation provided to one Mr. D. S. Blackwood was held to be exempt under s. 10(14) by the Tribunal in ITA No. 1843(Cal) of 1980. The CIT(A) after considering the circumstances of the case and the said decision of the Tribunal held that the value of rent-free accommodation provided to the assessee was exempt under s. 10(14). The addition of Rs. 13,796 was accordingly deleted".

3. The Revenue thereafter brought the matter in appeal before the Tribunal. The Tribunal after hearing the submissions of the parties held that the assessee had come to India on tour and that rent-free accommodation was provided to him while he was on tour to India for the performance of his duties. The Tribunal was further of the opinion that the benefit extended to the assessee did not result in personal advantage to the assessee. The Tribunal upheld the order of the CIT(A) in holding that the rent-free accommodation provided to the assessee was exempt under s. 10(14) of the IT Act. Our attention has been drawn to the decision of the Madras High Court in the case of [Additional Commissioner of Income Tax Vs. Brakes India Ltd.](#). It appears that the decision of the Tribunal gets in support from the decision of the Madras High Court referred to above. Nothing has been stated by the Revenue as to why the said decision of the Madras High Court should not be followed. We agree with the view expressed by the Madras High Court on this point and hold that rent-free accommodation provided to the assessee by his employer was exempt under s. 10(14) of the IT Act on the selfsame reason given by the Madras High Court.

4. Accordingly, the question referred to us is answered in the affirmative and in favour of the assessee.

There will be no order as to costs.

SUHAS CHANDRA SEN, J. :

I agree.