



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 116/2002

THE COMMISSIONER OF INCOME TAX Appellant

Through Mr. R.D. Jolly

versus

RAJIV CHOUDHRI

..... Respondent

Through Mr. P.K. Sahu with Mr. Prashant Shukla

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE V. B. GUPTA

ORDER

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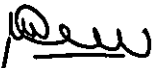
22.01.2007

For orders see ITA No.1190/2005.


MADAN B. LOKUR, J

JANUARY 22, 2007

Kapil


V. B. GUPTA, J



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 1190/2005

THE COMMISSIONER OF INCOME TAX Appellant
Through Mr. R.D. Jolly

versus

SUDHIR CHODHARIE Respondent
Through Mr. P.K. Sahu with
Mr. Prashant Shukla

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HON'BLE MR. JUSTICE MADAN B. LOKUR

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22.01.2007

This is a batch of 17 appeals filed by the Revenue in which a rather strange situation has arisen.

It may be noted at the outset that the facts in all these appeals are more or less the same and we are dealing with the case of Mr. Sudhir Chaudhary, one of the Assesseees.

For the assessment years 1979-80 to 1987-88, the income of the Assessee was assessed by the Assessing Officer as salary income.



For the assessment years 1988-89 to 1997-98, the Assessing Officer assessed the income as business income. The view of the Assessing Officer was upheld by the Commissioner of Income Tax (Appeals) but it was reversed by the Tribunal who found that the income should be assessed as salary income. This decision is assailed before us.

For the next two subsequent years 1998-99 and 1999-2000, the Assessing Officer again assessed the income as salary income.

Then for the assessment year 2000-2001, the Assessing Officer took a somersault and assessed the income as business income but the CIT (Appeals) assessed it as salary income. Learned counsel for the Assessee tells us that his client has received no intimation of an appeal having been filed.

For the Assessment year 2001-2002, in the case of another Director in the same company, that is, Ms.Anita Chaudhary, the Assessing Officer assessed her income as business income but again this was set aside by the CIT (Appeals) who assessed it as salary income. Again no appeal appears



to have been filed against this before the Tribunal.

Thereafter, for the assessment year 2002-2003 till assessment year 2004-2005, the income of Ms. Anita Chaudhary was assessed as salary income by the Assessing Officer and no further steps have been taken to challenge the view taken by the Assessing Officer.

On 25th August, 2006, we had noted that there is no consistency in the orders passed by the Assessing Officer and that he has apparently no regard for the orders passed by the Tribunal which held the income to be salary income.

Faced with this situation, learned counsel for the Revenue took some time to find out the correct position, particularly with regard to the last three assessment years (on 25th August, 2006 we did not have the information with regard to the assessment year 2004-05). The matter was then adjourned to 12th September, 2006.

On 12th September, 2006, since learned counsel for the Appellant was unwell, the matter was adjourned for today.



Even today, learned counsel for the Appellant is unable to deny information that has been supplied by learned counsel for the Assessee. Learned counsel for the Assessee has placed this information on affidavit, which is taken on record.

We are of the view that under these circumstances, the principle of consistency must apply and on the same facts, unless there is some warrant for doing so, the Assessing Officer must follow a consistent pattern. For the first nine assessment years, the Assessing Officer assessed the income as salary income and then for the next 10 assessment years, the income was assessed as business income. The Tribunal, however, found this to be salary income.

Thereafter, again for the next two assessment years, the income was assessed as salary income and then for the next two assessment years as business income and again for the next three assessment years as salary income.

We have been deprecating this attitude of the Revenue of not showing



any consistency in the orders passed by the Assessing Officer. This f

flop not only causes harassment to the Assessee but also adds to the work of

this Court for no good reason.

This being the state of affairs, we do not think that this appeal raises any substantial question of law that would warrant our consideration particularly since the Assessing Officer as well as the CIT(A) have in the recent past taken the view that the income of the Assessee is salary income and not business income.

Dismissed.


MADAN B. LOKUR, J


V. B. GUPTA, J

JANUARY 22, 2007

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