[1983] 15 Taxman 100 (Jp. - Trib.)

IN THE ITAT JAIPUR BENCH

Sudhir Kumar Sharma

v.

Income-tax Officer

OM PRAKASH, JUDICIAL MEMBER

MAY 30, 1983

SECTION 10(16) OF THE INCOME-TAX ACT, 1961—EXEMPTION—SCHOLARSHIPS—WHETHER STIPEND RECEIVED BY AN ARTICLED CLERK IN TERMS OF CHARTERED ACCOUNTANTS REGULATIONS, 1964, IS NOT INCOME LIABLE TO TAX—HELD, YES

Facts

The assessee claimed that the stipend received by him as an articled clerk from a firm of chartered accountants, under the provisions of the Chartered Accountants Regulations, 1964, was exempt from tax under section 10(*16*). The department rejected the claim on the ground that the stipend was paid as compensation for services rendered by the assessee to the firm.

On second appeal :

Held

An articled clerk joins a chartered accountant with a view to learning the work and receiving training. A newly recruited graduate is not supposed to have any knowledge of the work of chartered accountant and, therefore, no contribution can be made by him in the work, nor can he assist the chartered accountant in his work. It could not, therefore, be said that the stipend was paid for the services rendered by the assessee. The payment was made to meet out the cost of the books, coaching fees, examination fee, etc., as was the practice even before rule 32B of the Chartered Accountants Regulations, 1964, came into force. The stipend received by the assessee was, therefore, not his income and, hence, not taxable.

IT APPEAL NO. 631 (JP.) OF 1982.

M.P. Sharma *for the Appellant.* **H.S. Nanda** *for the Respondent.*

ORDER

1. Raising a small, but an interesting issue, this appeal is filed by the assessee for the assessment year 1981-82 against the order of the AAC. The assessee received a stipend of Rs. 2,000 during the year under appeal from a concern of the chartered accountants, namely, M.P. Sharma & Co. from whom he was receiving training as an articled clerk. The question arose whether the stipend constituted the income of the assessee liable to tax. The assessee's claim was that the stipend was exempt under section 10(*16*) of the Income-tax Act, 1961 ('the Act'). The authorities below rejected the case of the assessee and held that the stipend had been paid to the assessee as compensation for the services rendered by him to the concern of the chartered accountants. Before me Shri Sharma, the learned representative for the assessee, argues that the articled clerks became entitled to receive stipend under the Chartered Accountants Regulations, 1964, with effect from 1-7-1973. Prior to the said date, Shri Sharma submits that the chartered accountants, who imparted training to the articled clerks, used to pay partly amount to meet the coaching fee, examination fee, the cost of books, etc. What happened was, Shri Sharma says, that rule 32B of the Chartered Accountants Regulations, enjoining upon the chartered accountants to pay prescribed amount to the articled clerks, was brought into force as all the chartered accountants did not follow the practice of paying a paltry amount to the articled clerks to meet the cost of books, coaching fee, examination fee, etc. In this background, Shri Sharma argues that the stipend was not paid to the assessee as compensation for rendering the services but to meet out the cost of books, coaching fee, examination fee, etc., which an articled clerk has to pay during the course of training. Shri Nanda, the learned departmental representative, argues that the very word 'stipend' goes to show that it was paid by the employer for the services rendered by the employee. He says it is implied in the payment of stipend that the same was paid for the services rendered by the assessee to the concern of chartered accountants. I do not agree with the contention of the revenue. The fact is that an articled clerk joins a chartered accountant with a view to learning work of chartered accountant and receiving training thereof. Shri Nanda himself argues that any graduate either in commerce or arts or science is eligible to receive training of a chartered accountant. A newly recruited graduate is not supposed to have any knowledge of the work of chartered accountant and, therefore, no contribution can be made by him in the work of chartered accountant. So an articled clerk who joins a chartered accountant with a view to learning and receiving training cannot assist the chartered accountant in his work. Therefore, it cannot be said that the payment was made by the concern of the chartered accountants to the assessee for the services rendered by him. The contention of Shri Sharma appears to be correct that a prescribed amount was paid to the assessee to enable him to meet out the cost of books, examination fee, coaching fee, which he has to pay during the course of training. Mere use of the word 'stipend' does not mean that the payment was made to the assessee for the services rendered by him to the chartered accountant in his work. The Tribunal has to see the reality of the payment and it cannot be guided by the word 'stipend'. Seeing the background as exposed by Shri Sharma and the purpose of the assessee joining the chartered accountant, I am inclined to accept the case of the assessee that the payment was not made for any services rendered by the assessee to the chartered accountant in his works but it was made to meet out the cost of books, coaching fee, examination fee, etc. As by virtue of practice, some of the chartered accountants had paid before rule 32B of the Chartered Accountants Regulations came into force. I, therefore, hold that the stipend being received by the assessee is not his income and, hence, is not taxable.

2. The appeal is allowed.

13

[1983] 15 Taxman 101 (Ahd. - Trib.)

IN THE ITAT AHMEDABAD BENCH 'B'

H.K. Investment Co. (P.) Ltd.

v.

Income-tax Officer

K.T. THAKORE, ACCOUNTANT MEMBER AND U.T. SHAH, JUDICIAL MEMBER

JULY 28, 1983

SECTION 37(1) OF THE INCOME-TAX ACT, 1961—BUSINESS EXPENDITURE—WHETHER EXPENDITURE ON STAFF AND ON RUNNING ADMINISTRATION INCURRED BY INVESTMENT COMPANY, WHICH DERIVED INCOME BOTH FROM BUSINESS AND FROM DIVIDEND, IS ALLOWABLE AS DEDUCTION IN FULL AGAINST BUSINESS INCOME—HELD, YES—WHETHER EXPENDITURE ON INTEREST IS, HOWEVER, TO BE BIFURCATED AND ALLOWED PROPORTIONATELY AGAINST BUSINESS INCOME AND DIVIDEND INCOME—HELD, YES

Facts

The assessee, an investment company deriving income from business as well as from dividends, claimed that expenditure incurred by it on its staff, other administrative expenses and on interest should be allowed in full as a deduction in the computation of business income. Though the ITO rejected the claim, the Commissioner (Appeals) held that the expenditure should be bifurcated and allowed proportionately against business income and dividend income. The bifurcation of expenditure on interest, thus, reduced the deduction allowable to the assessee on inter-corporate dividends under section 80M.

On second appeal :

Held

Bifurcation of the expenditure on a proportionate basis in accordance with the income earned by the assessee against respective heads, namely, business and other sources, was not at all justified. The