

C.I.T., MADRAS
v.
BRAKES INDIA LTD.

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APRIL 6, 1993

[B.P. JEEVAN REDDY AND N. VENKATACHALA, JJ.]

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Income tax Act, 1961:

Sections 10(6)(vii) and 40(c)(iii)—Salary paid to Foreign Technical Director—Exempt under the head 'Salaries'—Whether could be included in the total income.

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During the accounting order relevant to assessment year 1965-66, the Respondent-assessee paid to its foreign technical director a total remuneration of Rs. 66,000 including a sum of Rs. 28,576 paid by way of perquisites. The Income-tax Officer allowed only a sum of Rs. 13,200 by way of perquisites and disallowed the balance of Rs. 15,376 in view of Section 40(c)(iii) of the Income-tax Act, 1961.

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On an appeal by the assessee, the Appellate Assistant Commissioner held that since the salary of the foreign technical director was exempt under S.10(6)(vii), the provision contained in Sec.40(c)(iii) was not applicable. Revenue preferred an appeal and the Tribunal held that S.40(c)(iii) was applicable. At the instance of the Assessee, Tribunal referred the question to the High Court. Since the High Court answered the question in favour of the assessee, Revenue preferred the present appeal.

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Dismissing the appeal, this Court,

HELD: Under section 10(6)(vii) of the Income-tax Act, 1961 the remuneration due to any technician, who was not a resident in any of the four financial years immediately preceding the financial year in which he arrived in India, chargeable under the head 'salaries', for services rendered as a technician, was exempt. Thus in the instant case, the salary paid to the foreign technical director was admittedly exempt under Section 10(6)(vii) of the Income-tax Act, 1961. In other words, it was nil for the purposes of the Act. If so, the second proviso to sub-clause (iii) of S.40(c)

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- A** is attracted, inasmuch as 'nil' income, under the head "salaries" is less than Rupees seven thousand five hundred. By virtue of the said proviso, the main provision in sub-clause (iii) goes out of picture. The High Court reasoned that if income of one rupee is less than Rs. 7,500, there is no reason for saying that 'nil' income is not an income less than Rs. 7,500.
- B** The High Court was right in taking the view that since the income exempted under Section 10 is not liable to be included in the total income, such exempted salary income should be treated as 'nil' income for the purposes of Section 40(c)(iii) of the Act. [1996 B-E]

- C** CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1287(NT) of 1982.

From the Judgment and Order dated 22.2.1978 of the Madras in Tax Case No. 24 of 1975.

- D** M. Gaurishankar Murthy, C. Ramesh, P. Parmeswaran and Ms. A. Subhashini for the Appellant.

Ms. Janki Ramachandran for the Respondent.

The following Order of the Court was delivered

- E** In this appeal preferred against the Judgment of the Madras High Court, the words "whose income chargeable under the head 'salaries' occurring in the second proviso to sub-clause (iii) of clause (c) of section 40 fall for interpretation. The assessment year concerned is 1965-66. During the accounting year relevant to the said assessment year, the assessee paid to its foreign technical director a total remuneration of Rs. 66,000 including a sum of Rs. 28,576 paid by way of perquisites. The Income-tax Officer held that by virtue of section 40(c)(iii) perquisites exceeding one-fifth amount of the salary cannot be allowed as a deduction. He held further, the second Proviso to the said sub-clause is not applicable inasmuch as the income chargeable under the head salaries was not Rs. 7,500 or less. Accordingly he allowed only a sum of Rs. 13,200 by way of perquisites. He disallowed the balance of Rs. 15,376.
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- H** The Appellate Assistant Commissioner, however, allowed the assessee's appeal holding that inasmuch as the salary of the foreign technical director was exempt from tax under section 10(6)(vi), the provision contained in section 40(c)(iii) was not applicable. The appeal filed by the

Revenue was allowed by the Tribunal. The Tribunal opined that merely because the salary is exempt under section 10(6)(vii), the provision in section 40(c)(iii) does not cease to apply. Under the proviso to the said sub-clause, only an employee whose income chargeable under the head salaries was Rs. 7,500 or less is exempted. Inasmuch as the income chargeable under the head salaries in this case is more than Rs. 7,500, the exemption does not operate. Since the said foreign technical director was an employee of the assessee, he was certainly governed by the provision section 40(c)(iii), said the Tribunal. At the request of the assessee, it stated the following question for the opinion of the High Court:

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"Whether on the facts and circumstances of the case, the Tribunal was justified in holding that the provisions of Section 40(c)(iii) were rightly invoked for the assessment year 1965-66 in relation to the remuneration of the Technical Director of the assessee - company."

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Section 40(c)(iii) as applicable to the assessment year 1965-66, read as follows:

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"40. Notwithstanding anything to the contrary in Sections 30 to 39, the following amounts shall not be deducted in computing the income chargeable under the head "profits and gains of business or profession".

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(c) in the case of any company.....

(iii) any expenditure incurred after the 29th day of February, 1964, which results directly or indirectly in the provision of any benefit or amenity or perquisite, whether convertible into money or not, to an employee (including any sum paid by the company in respect of any obligation which but for such payment would have been payable by such employee), to the extent such expenditure exceeds one-fifth of the amount of salary payable to the employee for any period of his employment after the aforesaid date:.....

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Provided further that nothing in this sub-clause shall

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A apply to any expenditure which results directly or indirectly in the provision of any benefit or amenity or perquisite to an employee whose income chargeable under the head "Salaries" is seven thousand five hundred rupees or less"

B Under section 10(6)(vii) of the Act, the remuneration due to any technician, who was not a resident in any of the four financial years immediately preceding the financial year in which he arrived in India, chargeable under the head 'salaries', for services rendered as a technician, was exempt. In this case, the salary paid to the foreign technical director was admittedly exempt under section 10(6)(vii). The contention of the assessee which has been accepted by the High Court, runs thus: the salary payable to the said director was exempt by virtue of Section 10(6)(vii). In other words, it is nil for the purposes of the Act. If so, the second proviso to the sub-clause is attracted, inasmuch as 'nil' income, under the head "salaries" is less than Rupees seven thousand five hundred. By virtue of the said second proviso, the main provision in sub-clause (iii) goes out of picture. The High Court reasoned that if income of one rupee is less than Rs. 7,500, there is no reason for saying that 'nil' income is not an income less than Rs. 7,500. Since the income exempted under Section 10 is not liable to be included in the total income, such exempted salary income should be treated as 'nil' income for the purposes of Section 40(c)(iii),
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E opined the High Court.

After hearing the counsel for the parties, we are of the opinion that the view taken by the High Court is a reasonable one and does not call for any interference.

F The appeal accordingly fails and is dismissed. No costs.

G.N.

Appeal dismissed.