ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Income Tax Reference No.192 of 1993

Order with Signature of Judge(s)

For hearing of main case.

24.03.2022.

Mr. Muhammad Aqeel Qureshi, Advocate for the applicant.
Mr. Ovais Farooqi, Advocate for the respondent.

The Income Tax Appellate Tribunal **(ITAT)**, vide Reference Application No.222/KB of 1991-92, has referred the following question of law, under Section 136 of the Income Tax Ordinance, 1979 (the repealed Ordinance):

> *"Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal was justified in holding that medical expenses borne by the employer cannot be termed as part of perquisites as defined in Section 16(2)(b) of the Income Tax Ordinance, 1979."*

Briefly stated the facts of the case are that the assessee /respondent is a state enterprise which filed its return of total income at Rs.3463383/-. The assessment thereafter was completed under Section 62 of the repealed Ordinance at an income of Rs.4,50,54,172/-. The Assessing Authority **(AA)** while making the assessment found out that certain employees were given medical reimbursement which in view of the AA was perquisite as per Section 16(2)(b)(iv) of the repealed Ordinance to those employees and thereafter while resorting to Section 24(i) of the repealed Ordinance made an addition of Rs.96,750/- to the income of the assessee. An appeal thereafter was filed before the Commissioner of Income Tax (Appeals) **[CIT(A)]**, who upheld the order of the AA. Thereafter an appeal was filed before the ITAT, who came to the conclusion that medical expenses reimbursed by an employer cannot be considered as a perquisite liable to

tax under Section 16(2)(b)(iv) read with Section 24(i) of the repealed Ordinance. Thereafter a reference application was moved by the department to the ITAT who, vide order dated 03.09.1992, referred the above mentioned question for opinion of this Court.

Mr. Muhammad Aqeel Qureshi Advocate has appeared on behalf of the department and stated that any allowance which is over and above 50% of the salary of an employee is perquisite and as the employees of the respondent company were reimbursed in respect of their medical expenses, which were in excess of 50% of their salary, hence, the department was fully justified in disallowing the claim and, therefore, the answer to the question may be given in "Negative" i.e. in favour of the department and against the assessee.

Mr. Ovais Farooqi Advocate has appeared on behalf of the respondent and has supported the order of the ITAT.

We have heard the matter at some length and have also perused the record.

Before proceeding any further we deed it appropriate to reproduce herein below the Section 16(2)(b)(iv) of the repealed Ordinance:

> ***16. Salary:*** *(1) The following incomes shall be chargeable under the head "Salary", namely:-*
>
> *(a)* .. ..
>
> *(b)* .. ..
>
> *(2) For the purposes of sub-section (1),--*
>
> *(a)* .. ..
>
> *(b) "perquisite" includes--*
>
> *(i)* .. ..
>
> *(ii)* .. ..
>
> *(iii)* .. ..
>
> *(iv) the value of any benefit provided free of cost or at a concessional rate*

In our view this is a case of simple reimbursement of medical expenses borne by the employees of the respondent company. The amount

given could not be termed as part of the salary upon which, in our view, provisions of Section 16(2)(b)(iv) of the repealed Ordinance could be attracted or could be disallowed under the provisions of Section 24(i) of the repealed Ordinance. In our view the approach of the ITAT was correct as reimbursement of an expense borne by an employee is nothing but reimbursement of the claim and the same does not form part of his salary as perquisite. It is a settled law that only those amounts which are part of the salary and paid in excess of 50% of the salary could be termed as perquisite. Perusal of Section 16(2)(b)(iv) of the repealed Ordinance, quoted above, reveals that only those allowances /benefits which are part of the salary and are paid in excess of 50% of salary of that employee are considered as perquisite and are disallowable in the hands of the employer but nowhere in the said provision of law it has been mentioned that reimbursement to the employee either spent on behalf of the said employer or as per the terms of the service could be termed as a perquisite to that employee, rather the same is simply a reimbursement of an expense and not a perquisite to the said employee upon which the provision of Section 16(2)(b)(iv) or Section 24(i) of the repealed Ordinance could be applied. We were also able to lay our hands to a decision given by the Bombay High Court in the case of *Commissioner of Income-Tax Vs. Boehringer-Knoll Ltd.* ***(1989 177 ITR 96)*** wherein it was held that expenses reimbursed to an employee are not perquisite.

In view of what has been discussed above, we are of the view that in the instant case the reimbursement of the medical expenses to the employer could not be considered to be a perquisite in their hand so as to disallow the same in the hands of the employer. Thus the answer to the question referred to us is given in “Affirmative” i.e. against the applicant /department and in

favour of the assessee /respondent. The instant ITA stands disposed of in the above terms.

Let a copy of this order be sent to the Registrar of the ITAT for doing the needful in accordance with law.

JUDGE

JUDGE