

(2003) 05 MP CK 0022

In the Madhya Pradesh High Court

Case No : IT Appeal No's. 19, 23, 27, 32 and 44 of 1999, 52 to 55 and 98 of 2000 5 May 2003 & Income-tax Appeal No's. 19, 23, 27, 32 and 44 of 1999 and 52, 53, 54, 55 and 98 of 2000

Commissioner of Income Tax

APPELLANT

Vs

A.K. Ghosh

RESPONDENT

Date of Decision : 05-05-2003

Acts Referred:

Income Tax Act, 1961 — Section 10, 119, 15, 16, 17

Citation : (2003) 131 TAXMAN 124

Hon'ble Judges : Dipak Misra, J; A.K. Shrivastava, J

Bench : Full Bench

Advocate : Rohit Arya, for the Revenue and H.S. Shrivastava and Sumit Nema, for the Assessee, for the Appellant;

Judgement

Dipak Misra, J.

In this batch of appeals preferred u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") the revenue has called in question the legal propriety of the orders passed by the Income Tax Appellate Tribunal (hereinafter referred to as the Tribunal") in number of appeals. It is seemly to state here that in some appeals a singular question of law has arisen and in some appeals two questions have cropped up for adjudication but the singular question being common to all, these appeals were heard analogously and are disposed of by this common order. However, for the sake of clarity and convenience we shall advert to the facts in I.T.A No. 32/99.

2. The facts which are essential to be stated are that the respondent/assessee, a Development Officer in the Life Insurance Corporation, was assessed to Income Tax by the Income Tax Officer, Jabalpur. For the assessment year 1989-90 the assessee claimed deduction on account of conveyance allowance for a sum of Rs. 9,600, additional conveyance allowance for an amount of Rs. 36,940 and 40% of the incentive bonus quantified at Rs. 50,175. The assessing officer disallowed the

deductions claimed under the heading "Conveyance, Additional Conveyance" after referring to the provision contained in section 10(14) of the Act. As far as incentive bonus is concerned it was disallowed upon referring to certain guidelines issued by the Central Board of Direct Taxes, New Delhi wherein it has been indicated that Development Officer is not entitled to get deductions on incentive bonus.

3. Feeling aggrieved by the aforesaid order passed by the assessing officer the respondent-assessee preferred an appeal before the Commissioner (Appeals), Jabalpur. Before the appellate authority it was contended that the assessing officer had decided the matter without affording an opportunity of being heard to the assessee and further disallowance of the deductions claimed by the assessee was not justified in law. The first appellate authority addressed itself to the merits of the case and came to hold that the assessee was entitled to the sum claimed towards conveyance allowance and additional conveyance allowance as the said amount was spent wholly and exclusively for the purpose of conveyance and as regards incentive bonus was concerned the order of the assessing officer was reversed and a direction was issued to grant 40 per cent of the amount of incentive bonus towards deduction.

4. It is pertinent to state here that the assessing officer had dealt with these two issues in respect of many a Development Officer and after the First Appellate Authority allowed the appeals the department went up in appeal before the Tribunal. As the assessee was aggrieved about the certain part of the order they preferred independent appeals and some of them also filed cross-objections. The Tribunal considered the appeals and cross-objections and passed a composite order. It is condign to mention here that certain appeals were preferred by the Development Officers as the appellate authority had not accepted the contentions of the assessee and confirmed the order of the assessing officer. The Tribunal noted the arguments of the learned counsel for the revenue and various counsel appearing for different assessee and came to hold that the conveyance allowance and the additional conveyance allowance are granted to meet the expenses incurred in performance of the duties of office or employment but the same has to be actually incurred by the assessee. Being of this view the Tribunal set aside the order passed by the authorities below and remitted the matter to the file of assessing officer to examine how much was the actual expenditure incurred by the assessee for the purpose of his office or employment. The Tribunal laid down certain guidelines in that regard. As far as issue relating to incentive bonus is concerned the Tribunal expressed the view that expenditure incurred on earning such incentive bonus is to be allowed as deductions after determining the profit which can be taxed u/s 17(1)(iv) of the Act. It is worth noting here that the Tribunal noticed that neither the assessing officer nor the first appellate authority had dealt with the expenses incurred by various assessee and that being the position it remanded the matter on this score also. It is pertinent to state here that with regard to aforesaid issue the Tribunal also issued certain directions.

5. This court at the time of admission had framed following substantial questions of law for adjudication :

"(a) Whether the conveyance allowance/additional conveyance allowance received by the Development Officer of LIC are exempt u/s 10(14) of the Act?

(b) Whether the Development Officer of LIC are entitled to 40% deduction of the incentive bonus received by them as an expenditure incurred for earning incentive bonus?"

6. We have heard Mr. Rohit Arya, learned counsel for revenue in all the appeals and Mr. H.S. Shrivastava, Mr. Sumit Nema, learned counsel for the respondent-assessee.

7. It is contended by Mr. Arya that the Tribunal has fallen into error by expressing the view that the conveyance allowance and the additional conveyance allowance received by the Development Officer of the Life Insurance Corporation are exempted u/s 10(14) of the Act on the base that the said amount is incurred in performance of the duties of an office or employment though conceptually the same is not permissible if the provisions enshrined under sections 10(14) and 17(1)(iv) of the Act are read in proper perspective and appreciated in a harmonious manner. It is canvassed by him that as far as grant of deductions in regard to incentive bonus is concerned the Tribunal has grossly erred by expressing the view that incentive bonus has to be classified as profit in addition to salary. It is propounded by him that the Tribunal had recorded a contradictory finding by holding that the incentive bonus is to be assessed under the heading salary but it should be treated as profit in addition to the salary received by the assessee. It is propounded by Mr. Arya that the Tribunal has totally erred in law by not following the decisions of number of High Courts and placed reliance on the decision rendered in the case of Commissioner of Income Tax Vs. Kiranbhai H. Shelat and Others, a decision of the Gujarat High Court on the premise that when there are two views, the view in favour of the assessee should be accepted.

8. The learned counsel appearing for the assessees have submitted that the Tribunal is absolutely justified in holding that the conveyance allowance and the additional conveyance allowance received by the Development Officer are exempted u/s 10(14) of the Act and the analysis made by the Tribunal cannot be found fault with. Learned counsel for the respondents have further submitted that the Tribunal has rightly granted the deductions in respect of incentive bonus and the same having been based and founded on proper discussion and analysis and the nature of income it cannot be flawed. To bolster the aforesaid submission heavy reliance has been placed on the decisions rendered in the cases of Kiranbhai H. Shelat (supra) and R.K. Salhotra v. ITO (2002) 125 Taxman 624 (J & K).

9. We shall first advert to the issue relating to allowance of deductions pertaining to conveyance allowance and additional conveyance allowance. Section 10(14) of the Act reads as under :

"(14)(i) any such special allowance or benefit, not being in the nature of a perquisite within the meaning of clause (2) of section 17, specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit, as may be prescribed, to the extent to which such expenses are actually incurred for that purpose;

(ii) any such allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides, or to compensate him for the increased cost of living, as may be prescribed and to the extent as may be prescribed :

Provided that nothing in sub-clause (ii) shall apply to any allowance in the nature of personal allowance granted to the assessee to remunerate or compensate him for performing duties of a special nature relating to his office or employment unless such allowance is related to the place of his posting or residence;"

10. On a bare perusal of the aforesaid provision it is clear as day that any special allowance or benefit which is not a perquisite but specifically granted to meet, the expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment, deductions would be permissible subject to specification of the amount by the Central Government by way of notification. The emphasis is on the actual expenses incurred by the assessee. It is not disputed before us that the Development Officers are full time employees of the Life Insurance Corporation and they are categorised in Class II officer, As per the instructions of the Life Insurance Corporation the Development Officer has the following duties and obligations to perform :

"Duties and obligations :

(A) His duties as a Development Officer shall be :

(i) to develop and increase the production of life insurance business in a planned way as far as may be practicable in the area that may be allotted to him or in which he is allowed to work from time to time through the agents placed under his supervision by the Corporation and in consonance with the corporated objectives of the Corporation.

(ii) to guide, supervise and direct the activities of the agents, placed under his supervision by the Corporation.

(iii) to introduce suitable persons to the corporation for appointment as new agents.

(iv) to act generally in such a way as to activate existing agents and motivate new agents, so as to develop a stable agency force.

(v) to render all such services to policy holders as conducive and motivate new agents so as to develop a stable agency to better policy servicing.

(vi) to carry out investigation of claims, revival of lapsed policies and liaison work in connection with salary savings scheme business.

(vii) to perform such other duties as may be entrusted or assigned to him from time to time.

(viii) He shall ensure that the agents in his organisation conduct their work and/or business strictly in accordance with the provisions of the Insurance Act, 1938, rules framed thereunder and such other rules and regulations that the Corporation may issue from time to time and the Life Insurance Corporation of India (Agents) Regulations, 1972, as amended from time to time and in the best interest of the Corporation.

(B) & (C) "

11. If the aforesaid functions are taken note of it becomes graphically clear that the Development Officers are required to travel extremely within the area allotted to them, visit to various places and travelling is absolutely necessitous to carry out the obligations cast on the officer by the instructions issued by the employer. It is worthwhile to state here that the Government of India vide Notification No. 606 dated 9-6-1989 has specified that the conveyance allowance in performance of duties is to be exempted. The relevant portion of the said notification reads as under :

"In exercise of the powers conversed by sub-clause (i) of clause (14) of section 10 of the Income Tax Act, 1961 (43 of 1961), the Central Government hereby specifies any allowance granted to meet the expenditure incurred on conveyance in the performance of the duties of an office or employment of profit, for the purposes of the said sub-clause for the assessment year 1989-90 and subsequent assessment years. (Notification No. GSR 606 dated 9-6-1989)"

12. We have reproduced the notification only to highlight that the conditions precedent as enshrined u/s 10(14) of the Act are specified. The Tribunal has granted benefit to the assessee as the assessment years pertain to the year which is subsequent to the date of issue of notification.

13. Reading the aforesaid provisions in entirety and appreciating the factual scenario in proper perspective and keeping in view the instructions of the Life Insurance Corporation and the Gazette Notification issued by the Government of India we conclude and hold that the conveyance allowance/additional conveyance allowance received by the Development Officer of the Life insurance Corporation are exempted u/s 10(14) of the Act and hence, the order passed by the Tribunal is impeccable on this score.

14. The next question relates to the entitlement of deduction on the incentive bonus. Mr. Rohit Arya, learned counsel for the revenue submits that when number of High Courts have expressed the view that no deduction is permissible as far as incentive bonus is concerned the Tribunal should have followed the majority view and should not have relied on the decision of Gujarat High Court

rendered in the case of Kiranbhai H. Shelat (supra). It is urged by him that incentive bonus is inseparably and inseverably connected with the employment and, therefore, by no stretch of imagination it can be regarded as profit thereby engulfing the concept of same expenditure. On the contrary, learned counsel for the assessee would like us to interpret that incentive bonus is not earned without any expenses and, in fact, incurring of expenses is inevitable and its significance should not be marginalised.

15. To understand the scenario in proper perspective it is imperative to mention that Development Officer are full time employees of the Life Insurance Corporation and we have mentioned their duties and obligations. In this context we may profitably refer to the definition of salary which occurs in section 17(1) of the Act. It reads as under :

"Salary", perquisite" and profits in lieu of salary" definedFor the purposes of sections 15 and 16 of this section.

(1) "Salary includes

(i) wages;

(ii) any annuity or pension;

(iii) any gratuity;

(iv) any fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages;

(v) any advance of salary;

(va) any payment received by an employee in respect of any period of leave not availed of by him;

(vi) the annual accretion to the balance at the credit of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under rule 6 of Part A of the Fourth Schedule; and

(vii) the aggregate of all sums that are comprised in the transferred balance as referred to in sub-rule (2) of rule 11 of Part A of the Fourth Schedule of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under sub-rule (4) thereof."

16. The Tribunal has expressed the view that the incentive bonus is to be assessed under the head "Salary" being profit in addition to the salary received by the assessee. To do so it has placed reliance on section 17(4) of the Act. in the case of Kiranbhai H. Shelat (supra) it has been held as under :

"Even in cases falling after 1-4-1989, when section 10(14) came to be amended and the exemption was confined only to notified allowances (later amended with effect from 1-4-1989, as prescribed allowances), wherein the income covered by section 2(24) in the nature of 30 per cent of the incentive bonus earned is not

exempted by the provisions of section 10(14), such allowances as are income within the meaning of section 2(24), cannot be straightaway treated as salary and on the basis of what we have said hereinabove, it will have to be ascertained whether the expenditure intended to be met was actually incurred and if so incurred whether any part of such special allowance still remained with the employee so as to be described as profit in addition to his normal salary and wages. This exercise will have to be confined only to 30 per cent of the incentive bonus earned which alone was intended by the Life Insurance Corporation of India as a special allowance granted to the Development Officer to meet the expenses for the discharge of their duties of office and would, therefore, be a special allowance specifically granted to meet the expense for the discharge of duty. If out of such 30 per cent of the incentive bonus earned, any amount is not actually expended for the purpose intended, then there would be no question of reimbursing any sum which is not reimbursable and that part will be profit and gain to the assessee and will be treated as salary u/s 17(1)(iv) of the Act. The idea underlying such reimbursement properly so-called is to provide restoration of equivalent for something paid or expended and not to cause profit or gain to the employee. Reimbursement of personal expenses which only results in personal profit or gain to the employee obviously cannot be omitted while working out the profits in addition to salary or wages.

Even if the expenses component of the incentive bonus was not to be treated as a special allowance specifically granted to the assessee within the meaning of section 2(24), the receipt of the entire incentive bonus will have to be examined as something given in addition to the salary or wages of the Development Officer, especially when it is specifically kept out of the "annual remuneration" of the Development Officers as defined in the rules regulating the terms and conditions of their service. Even in such a case, it will have to fall in one of the categories named in section 17(1) for being put under the head income from Salaries". There again the closest it goes is to section 17(1)(iv) as "profits in lieu of salary or in addition to salary". Therefore, the assessee's profit in that case also will have to be worked out which cannot be done unless the expenditure which is necessary and was properly incurred for the purpose of earning the income, is deducted therefrom. The Development Officer can still demonstrate that he was required to incur the expenditure as a part of his duty to enable himself to realise the proceeds of the incentive bonus. Thus, for working out the amount of profit in addition to salary, there would be deducted from the gross incentive bonus, expenses properly incurred in realising it. This deduction would be warranted to reach the profit element cannot be denied to the assessee-employee on the ground that the statutory deductions are already provided in section 16..." (p. 656)

Finally Their Lordships noted the conclusion as under :

"We hold that the Appellate Tribunal was right in directing the appellate authority to allow the incentive bonus as deduction, but only to the extent of

reimbursement of expenses actually incurred upto the maximum limit of 30 per cent of the incentive bonus earned by the assessee and that it was right in including the net amount after such deduction in the salary income.... " (p. 661)

17. In this regard we may refer with profit to the decision rendered in the case of *The Commissioner of Income Tax Vs. Shri Gopal Krishna Suri and Others*, wherein a Division Bench of the Bombay High Court expressed the view as under :

".. There is unanimity among the High Courts on the status of the Development Officers as full time employees of the Life Insurance Corporation. A perusal of the service rules shows that the main task of these officers is to develop the business of life insurance. Such development is measured by the amount of premium secured in the first year on the new policies by reason of efforts put in by the Development Officers. The efficiency for the Development Officers is judged with reference to the amount of first year's premium that he obtains and if the amount of premium is at least five times the yearly expenses incurred by the Life Insurance Corporation on the Development Officers, then their performance is regarded as satisfactory. With a view to encourage such officers to rise above the minimum standard, they are given incentives. Similarly, if their performance falls below the minimum standard, then they are penalised by way of disincentives. The scheme is applicable only to the employees of the Life Insurance Corporation as a full time employee, a Development Officer receives salary and that salary is liable to decrease if his efficiency falls below a standard which is measured by the cost ratio. The remuneration payable to such officers under the rules cannot exceed certain percentage of the net eligible premium collected on the policies secured by the Development Officers. The instruction also states that the incentive bonus shall be payable only to those officers whose cost ratio is less than a stipulated percentage. Under the circumstances, the amount paid as incentive, the amount paid as remuneration as also the amounts paid after deducting the disincentives constitute salary in the hands of the employees. Such payments do not have any other legal character. Sections 16 and 17 of the Income Tax Act are wide enough to take within their ambit all the above payments which are made only by virtue of the Development Officer being an employee of the Life Insurance Corporation. These payments are in the nature of commission which is calculated at a percentage of the premium generated. Hence, they are exigible to tax as part of salary income. Once these payments are exigible to tax as salary income then such employees cannot claim any deduction other than standard deduction u/s 16. Similarly, in the absence of any notification u/s 10(14) granting exemption, the incentive bonus is liable to be assessed to tax as salary...." (p. 824)

18. In the case of *B.M. Parmar Vs. Commissioner of Income Tax*, the view in this regard has been expressed in the following terms :

"In the matter of tax, the statute is to be interpreted strictly. A provision has to be construed keeping in view the purpose and object for which it is enacted. The

concept of commercial principles or business practice would not be relevant unless it is found to be inevitable. Deduction u/s 16 is actually meant to meet various expenses incurred by an employee in the course of his employment. The provisions of section 16 as in force prior to the amendment effective from 1-4-1975, permitted deductions under five different heads/clauses. Out of those five heads, two items, namely, (i) expenditure incurred in entertaining people connected with the employer's business, and (ii) amount of tax on profession, etc., still exist with modifications in clauses (ii) and (iii) of section 16. The remaining three items of deductions, namely, (i) expenditure on the purchase of books, (ii) expenditure on conveyance, and (iii) expenditure incurred by the employee wholly, necessarily and exclusively in the performance of his duties, do not any more exist and instead standard deduction at a fixed percentage/amount is allowed under clause (i) of section 16. When an employee is allowed deduction under clause (i) of section 16, he cannot claim a second deduction on the ground of having incurred certain expenditure in the performance of his duties.

The assessee has not been able to show that he was not paid any travelling allowance while going to the field in connection with the insurance business. He cannot claim a second reimbursement from the amount of the incentive bonus. He, being an employee of the Life Insurance Corporation of India, is entitled to the allowances and benefits in respect of his duties as admissible to other employees.

On a consideration of the entire controversy, it is held that incentive bonus is assessable under the head "Salaries" and not under the head Profits and gains of business or profession". It is further held that deduction u/s 16(i) of the Act is admissible under the head "Salaries" and no separate deduction on account of expenditure is permissible." (p. 697)

19. The Madras High Court in the case of Commissioner of Income Tax Vs. P. Arangasamy and Others, has held thus :

"Profits, fees, commission and perquisites referred to in section 17(1)(iv) may be in lieu of or in addition to regular salary or wages. They are all as such taxable as regular salary or wages. A lump sum paid in lieu of a taxable benefit is equally taxable. The payment must be a reward or return for his acting as an employee. Incentive bonus cannot in any view be properly regarded as "profit" for the earning of which expenditure is required to be incurred and which expenditure can be claimed as a deduction. It can at best be regarded as a commission as it is calculated as a percentage of the premium generated. No deduction thereafter is permissible while computing the total income of the assessee. Having regard to the scheme providing for these payments which shows in abundantly clear terms that the incentive is an addition to the normal remuneration for performance at a level higher than the minimum it is only an addition to the salary. Incentive bonus paid is not only to Development Officers of the Life Insurance Corporation but to workers in almost every large industry and such incentive bonus has not been regarded as "profit"." (p. 568)

20. A Full Bench of the Karnataka High Court in the case of CIT v. M.D. Patil (1998) 229 ITR 711 held thus :

"... keeping in view the aforesaid discussion, since a Development Officer receives the incentive bonus/commission based on the insurance business promoted by him but in addition to the salary payable to him, therefore, the additional income so derived by the Development Officer during the course of and pursuant to the terms and conditions of his employment can be brought to tax only under the head of income "Salary" and not under the head "Profit and gains of business or profession and further the only deductions permissible under the provisions of the Act are to be those as specified in section 16 of the Act." (p. 78)

21. In this context it is worth referring to the decision rendered in the case of Commissioner of Income Tax Vs. Ramlal Agarwala, wherein the Division Bench referred to the judgment of the Andhra Pradesh High Court rendered in the case of K.A. Choudary Vs. Commissioner of Income Tax and Others, and held thus :

"In the case of K.A. Choudary Vs. Commissioner of Income Tax and Others, , the Andhra Pradesh High Court has relied on the decision of the Supreme Court in Gestetner Duplicators Pvt. Ltd. Vs. Commissioner of Income Tax, West Bengal, and also on the decision in the case of M. Krishna Murthy and Others Vs. Commissioner of Income Tax, Andhra Pradesh, Hyderabad and Others, , wherein the view has been taken on incentive bonus while considering the applicability of section 40A of the Income Tax Act. That incentive bonus forms part of the salary. Once the standard deduction u/s 16 of the Income Tax Act is allowed, no further deduction is warranted from the bonus receipts.

We are in agreement with the Andhra Pradesh High Court. When the employee received bonus from the employment while in employment for the extra work, this is nothing but forms part of the salary and once the standard deduction is allowed to the assessee as employee treating his income as salary income there is no question of any further allowance out of the bonus or commission received from the employment." (p. 830)

22. In this regard we may profitably refer to the another decision rendered in the case of Commissioner of Income Tax Vs. H.S. Sandhu, While dealing with question which pertains to allowing of deduction of 40% in regard to incentive bonus the Bench expressed the view as under :

"Question No. 1 is concluded by the judgment of this court in Income Tax References Nos. 105 and 106 of 1986 23. In the case of Commissioner of Income Tax Vs. T.K. Ginarajan, Development Officer, LIC of India, the High Court of Kerala held as under :

"We are unable to accept the finding of the Tribunal that 30 per cent of the incentive bonus represents the expenditure at the hands of the assessee. The Tribunal has stated that the assessee should have expended 30 per cent on

account of their activities which are in the nature of training agents, maintaining establishment for the same, etc. We do not find any material to support this finding of the Tribunal. The Tribunal has not gone into the nature of duties of the development officers, for which they are paid usual salary. We requested counsel for the assesseees to clarify the nature of duties of the development officers and from the nature of duties explained by him, we feel what was stated by the Tribunal was part of the normal duties of the development officers for which they are paid salary. It is not out of place to refer to the details furnished in the decision of the Karnataka High Court, wherein the High Court has referred to Schedule III of the Regulation which provides for payment of travelling allowances and reimbursement of other expenses, incurred by the development officers in the normal discharge of their duties. Therefore, we find that the incentive bonus which is a share of premium on extra business canvassed is an additional payment whether it can be called "commission", as was done by the Bombay High Court, or profit in lieu of salary or in addition to salary as claimed by the assesseees and is nothing but salary coming within the meaning of the term contained in section 15 of the Income Tax Act. We do not find any provision in the Income Tax Act, except section 10(14), for allowing deduction towards expenditure of this nature claimed by the assesseees. There is no material to hold that incentive bonus or any part of it is in the nature of reimbursement of expenditure by the employer to the assessee to qualify for deduction u/s 10(14). In any case, even such an expenditure u/s 10(14) can be allowed only if it is granted specifically to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties to the extent such expenses are actually incurred for that purpose. Therefore, section 10(14) does not also apply to the cases at hand for the relevant assessment years.

Therefore, following the decisions of the High Courts referred to above particularly that of the Full Bench decision of the Karnataka High Court in CIT v. M. D. Patil (supra), and disagreeing with the view of the Gujarat High Court, we are of the view that incentive bonus is only a part of the salary of the assesseees and assesseees are not entitled to any deduction over and above the standard deduction. We are unable to accept the logic adopted by the Gujarat High Court in dissecting the word "profit" occurring in the definition of "salary" and allowing the estimated expenditure portion based on the opinion given by the LIC of India without any statutory provision authorising it, in their decision, referred to above. The proposition canvassed by the assesseees that incentive bonus is "profit" and the profit in the hands of the employees has to be computed after deducting expenditure is against the principle laid down in the decision of the Supreme Court in Karamchari Union, Agra Vs. Union of India and Others, .." (p. 470)

24. Recently a Division Bench of the Rajasthan High Court in the case of H.M. Pareek Vs. Commissioner of Income Tax, referred to the decision rendered in the case of Gopal Krishna Suri (supra) by the Bombay High Court and concurred with the same clearly holding that once incentive bonus forms a part of the salary

there is no question of any deduction out of that bonus amount.

25. At this juncture we may usefully refer to a Division Bench decision of the High Court of Orissa rendered in the case of CIT v. Govind Chandra Pani (1995) 213 ITR 783. The Bench has placed reliance upon the decision rendered in the case of Corporation of the City of Nagpur Vs. Its Employees, and came to hold that expression "bonus" is within the inclusive definition of the term "salary". Their Lordships also placed reliance on the decision rendered in the case of Gestetner Duplicators Pvt. Ltd. Vs. Commissioner of Income Tax, West Bengal, and eventually held thus :

"...In view of the rules of interpretation referred to by us in this judgment and the decision of the Supreme Court considering the same expression ,salary" and the manner in which and the mode in which the incentive bonus is earned by a Development Officer under the Life Insurance Corporation, the conclusion is irresistible that the incentive bonus earned by a Development Officer of the Life Insurance Corporation partakes of the character of salary within the ambit of section 17 of the Income Tax Act and, therefore, has to be computed u/s 16 of the Act. The said expression "salary" came up for consideration in the context of the question whether commission received from the employer in addition to salary is assessable as salary or not in the case of CIT v. Bijay Kishore Kapoor (1993) 302 ITR 129. A Bench of this court, following the decision of the Supreme Court in Gestetner's case (supra), had held that the terms of engagement having clearly reflected the relationship between the employer and employee, the commission received by the employee was assessable as income from salary." (p. 788)

26. Learned counsel for the respondents/assesseees placed heavy reliance on the decision rendered in the case of R.K. Salhotra (supra) wherein the Bench referred to the Circular issued by the Central Board of Direct Taxes. The said circular reads as under :

"... Sub : Incentive Bonus paid to Development Officers.

I am directed to refer to your letter No. Mktg/DO/163 dated 5-1-1996, and the scheme submitted in pursuance to discussions the officers of the Corporation had with the Central Board of Direct Taxes when representatives of National Federation of Insurance Field Workers of India were also present. Your request for notifying Incentive Bonus under sub-clause (14) of section 10 of the Income Tax Act cannot be acceded to. It may, however, be added that the portion of the allowance certified as having been actually incurred in the performance of duties shall be exempt under the above provision...."

After referring to various decisions rendered and taking note of concept of issue of circular u/s 119 of the Act the Bench in paragraphs 13 and 15 as under :

"13. We are accordingly of the view that the circular in question would have impact on the issue and this has to be given effect to.

14.** ** **

15. We accordingly prefer and follow the view expressed by the Gujarat High Court. This is because, the judgment in the above said case takes notice of the circular issued by the Central Board of Direct Taxes whereas, the circular in question was not brought to the notice of Punjab and Haryana High Court, and therefore, that court was not in a position to comment upon the impact of the said circular."

27. In this context, we may profitably refer to the observation of the Supreme Court made in the case of *M/s. Wilh, Wilhelmsen Vs. Commissioner of Income Tax, West Bengal-1*, wherein Their Lordships dealt with the issue of orders, instructions and directions by the Board and held as under :

"The provision is clear. It requires no elaboration. It is however, evident that the power so conferred on the Central Board of Revenue has to be exercised for the purpose of and within the four corners of the Act."

28. Keeping in view the aforesaid observation and the language employed in the circular, we are of the considered opinion, it cannot be regarded as binding. In view of the aforesaid, we are unable to persuade ourselves to agree with the view expressed in the case of *R.K. Salhotra (supra)*.

29. It was also contended by the learned counsel for the respondents that the view expressed by the Gujarat High Court is pragmatic and exposits the path of expediency keeping in view the concept of taxation. A taxing statute has to be construed in *stricto sensu*. The concept of pragmatism or any kind of expediency is, in our considered view, alien to it. To import the said conceptions would not only pave the path of uncertainty but also create an atmosphere of an incurable anomaly. Hence, despite the persuasive elquence of the learned counsel for the respondents, we remain absolutely unimpressed by the aforesaid submission. It is perceivable that the High Courts of Bombay, Calcutta, Madras, Karnataka, Rajasthan, Kerala, Orissa and Punjab & Haryana have taken the view that no deduction is allowable in respect of incentive bonus paid to the development officers working in the Life Insurance Corporation. The High Courts of Gujarat and Jammu & Kashmir have taken a different view. We are in respectful agreement with the view expressed by the majority of High Courts.

30. Ex-consequent the appeals are allowed in part. However, there shall be no order as to costs.