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**(1995) 06 OHC CK 0007**

**In the Orissa High Court**

**Case No : S.J.C. No's. 69 and 70 of 1990**

Commissioner of Income Tax

APPELLANT

Vs

Anil Singh

RESPONDENT

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**Date of Decision : 21-06-1995**

**Acts Referred:**

Income Tax Act, 1961 — Section 10(14), 16, 16(1), 17, 192

**Citation : (1995) 83 TAXMAN 224**

**Hon'ble Judges : S. Chatterji, J;B.N. Dash, J**

**Bench : Division Bench**

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## **Judgement**

1. The present reference at the instance of the Commissioner, Orissa, had raised the following question :

"The Tribunal having held that the commission receipt was assessable as salary u/s 16, whether, on the facts and in the circumstances of the case, the Tribunal was justified in further holding that a part of such commission was exempt u/s 10( 14 ) of the Act ?"

The facts of the case reveal that the assessee worked as a supervisor in Indian Sewing Machine Co. Ltd., Bhubaneswar. He was paid salary at the rate of Rs. 300 per month and in addition to that he also derived commission at Rs. 44,283 for the assessment year 1982-83 and Rs. 18,852 for the assessment year 1983-84. The assessee claimed deductions of Rs. 20,640 for the assessment year 1982-83 and Rs. 10,255 for the assessment year 1983-84 out of his commission income on the basis that he had incurred actual expenses for earning this income. The ITO rejected his claim. On appeal, the AAC held that a deduction at the rate of 30 per cent of the commission earned should be allowed after allowing the deduction u/s 16(1) of the income tax Act, 1961. The Tribunal, relying on the decisions of the Tribunal, Hyderabad Bench, held that the assessee was entitled to deduction of 30 per cent of the commission and confirmed the order of the AAC. The point arising in this case is well-covered by an earlier decision of this Court in Commissioner of Income Tax Vs. Bijay Kishore Kapoor, wherein it has

been held that in terms of clause ( iv ) of section 17 of the Act, "salary" includes any fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages. Section 17 contains definitions within a definition. For the purposes of the section, there is no difference between commission which is wholly dependent upon work done and fixed salary on a periodic footing. It has further been held that the terms of engagement clearly reflected the relationship between the employer and employee. The employer itself considered the payment as salary and made deductions u/s 192 while making the payment. The commission received by the assessee was assessable as income from salary and deduction at the rate of 30 per cent could not be allowed on account of expenses.

2. Following the ratio of the aforesaid decision, the references are answered in favour of the revenue and against the assessee.