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**(1997) 07 MAD CK 0118**

**In the Madras High Court**

**Case No : T.C. No. 131 of 1997, Reference No. 120 of 1997**

Commissioner of Income Tax

APPELLANT

Vs

E.A. Rajendran

RESPONDENT

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**Date of Decision : 22-07-1997**

**Acts Referred:**

Income Tax Act, 1961 — Section 10(14), 101, 15, 16, 17

**Citation :** (1997) 142 CTR 244 : (1999) 235 ITR 514

**Hon'ble Judges :** K.P. Sivasubramaniam, J; K.A. Thanikkachalam, J

**Bench :** Division Bench

**Advocate :** Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

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## **Judgement**

Thanikkachalam, J.—At the instance of the department, the Tribunal referred the following question for the opinion of this Court u/s 256(2) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the entire "amount of additional conveyance allowance and 40% of incentive bonus received by the assessee as an employee of LIC of India is exempt ?"

2. The assessee is a Development Officer in the Life Insurance Corporation of India ("LIC") and has received incentive bonus and also additional conveyance allowance to cover the expenses incurred by him on account of conveyance. The Assessing Officer rejected the claim of the assessee that the additional conveyance and incentive bonus have to be exempted from tax. On appeal, the Deputy Commissioner (Appeals) allowed 40 per cent of the incentive bonus as deduction and also deleted the addition made by the Assessing Officer with regard to the additional conveyance allowance, following the decision of the Tribunal in the case of T. S. Sivaram [IT Appeal Nos. 1691 & 1692 (Mad.) of 1988]. In the revenue's appeal, the Tribunal upheld the finding of the first appellate authority.

3. The point for consideration is whether the entire amount of additional conveyance allowance and 40 per cent of the incentive bonus received by the assessee as an employee of LIC are admissible deductions.

4. Mr. S. V. Subramaniam, the learned Senior Standing Counsel (I.T.) submitted as under : The Circular dated 28-11-1986 issued by the Central Board of Direct Taxes ("CBDT") will not be applicable after the amendment brought about in section 10(14) of the Income Tax Act, 1961 ("the Act") by the Taxation Laws Amendment Act, Act 4 of 1988, which came into effect from 1-4-1989. After coming into force of the amendment as per section 10(14)(i) of the Act, special allowance or benefit, not being in the nature of a perquisite within the meaning of clause (ii) of section 16, was specifically granted to meet the expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit, as the Central Government may, by notification in the Official Gazette, specify, to the extent to which such expenses are actually incurred for that purpose. According to the learned Senior Standing Counsel, the notification as contemplated u/s 10(14)(i) is not yet issued and, therefore, the additional conveyance allowance cannot be allowed as a deduction by computing the income under the head "Salary". In order to support this contention, reliance was placed upon the decision in Commissioner of Income Tax Vs. B. Chinnaiah and Others, . According to the Senior Standing Counsel, if deduction is claimed u/s 16 of the Act as salary, only standard deduction as contemplated under the provisions contained in section 16 can be asked for and no further deduction is possible and, therefore, the additional conveyance allowance granted to the assessee by the LIC can neither be allowed as a deduction u/s 10(14)(i) nor u/s 16. It was further submitted that a notification was issued specifying special allowances under sub-clause (i) of clause (14) of section 10 of the Act, wherein neither the additional conveyance allowance nor the incentive bonus was mentioned to be treated as special allowance. According to the learned Senior Standing Counsel, the notification issued u/s 10(14)(i) in Notification No. GSR. 606 (E) dated 9-6-1989 would apply only where there is reimbursement of the expenditure or conveyance allowance given to meet such expenditure actually incurred and in the present case, no deduction was claimed with regard to the allowances granted to meet the expenditure incurred on conveyance in the performance of duties of office or employment. Therefore, the said notification will not be applicable to the facts of the present case. According to the Senior Standing Counsel, even the LIC treated the payment of incentive bonus as salary and, therefore, deduction can be given only u/s 16. It was ultimately contended that in view of the various decisions of this Court, it is not possible for the assessee to claim deduction of the additional conveyance allowance as well as the incentive bonus received by the assessee and that, therefore, the Tribunal was not correct in granting deduction with regard to additional conveyance allowance as well as 40 per cent of the incentive bonus.

4.1 On the other hand, Mr. P. C. A. Ramanujam, the learned counsel appearing for the assessee, submitted as under : Section 17(1) of the Act defines the

expression "Salary" for the purpose of sections 15, 16 and 17 of the Act, by way of an inclusive definition. Section 17(2) defines "perquisites" and section 17(3) defines "profits in lieu of salary". All the three definitions are inclusive and not exhaustive. Section 17 has nothing to do either with deductions or with exemptions. It is merely a provision defining the term "salary" and the quantum of salary has to be determined on a proper interpretation of the agreement between the employer and the employee in that regard. There was controversy with regard to bonus, especially in the context of the definition of "salary" in rule 2(h) of Part "A" of IV Schedule to the Act. Section 17(3)(i) defines the term "profits in lieu of salary". The use of the term "profits" is significant; whether it is sections 15, 16, 17, 18, 22, 28 or 57, the very assessment of the various heads of income will depend upon the charging section, which is section 4. Unless a receipt can be brought in as "income" u/s 4, it cannot be taxed. This was laid down long ago by the Privy Council in CIT v. Chitnavis AIR 1932 S.C. 178. Section 28 and section 29 provide for the determination of profits and gains of business or profession with reference to the provisions contained in sections 30 to 43C of the Act. It is axiomatic that in arriving at the figure of profits in a commercial sense, business expenditure of all types, whether specifically provided for or not, may be deducted even u/s 28(1) itself, provided it is an expenditure connected with or arising out of trade or it is a commercial loss. The Madras High Court held in Commissioner of Income Tax, Tamil Nadu-V Vs. Sitalakshmi Mills Ltd., , that when there is no specific statutory provision for a deduction in the computation of taxable business profits, it does not mean that the item goes without any deduction at all, but the question will have to be resolved on the basis of commercial accounting principles. Profits represent plus income and losses represent minus income. "Expenditure" is negative profit. These principles applicable to section 28 will equally be applicable to the determination of " profits in lieu of salary" u/s 17 of the Act. Reliance was placed upon the decision in Commissioner of Income Tax (Central), Delhi Vs. Harprasad and Co. P. Ltd., . Standard deduction was brought in only to simplify salary assessment and not to penalise salary earners. Refusal to allow deduction will mean taxing expenditure which is against the canons of equity. The very employment under LIC is saddled with a liability to procure certain amount of business and this entails expenditure. Res judicata has no application to Income Tax proceedings and the decisions given in an assessment year are not binding either on the assessee or the department in a subsequent year. If fresh facts come to light, a different conclusion can be reached. (vide : M. A. Namazie Endowment v. CIT ( [1988] 174 ITR 58).

5. We have heard the learned Senior Standing Counsel for the department as well as the learned counsel for the assessee. As already pointed out, the Tribunal allowed additional conveyance allowance and 40 per cent of the incentive bonus as deductions, treating them as salary. The question whether the incentive bonus received by the Development Officers of the LIC., whether treated as part of the salary or perquisite, is taxable under the head "Salary" and the permissible

deductions under the said head are as specified u/s 16, came up for consideration in B. Chinnaiah's case (supra) before the Andhra Pradesh High Court. Following the earlier decision in K. A. Chowdary v. CIT [1989] 183 ITR 29, the Andhra Pradesh High Court held that the incentive bonus received by Development Officers of LIC constitutes salary and to enable the assessee to take advantage of section 10(14), there must be a notification by the Central Government specifying the extent to which the expenses are allowable. In the present case, there is no such notification. Hence, the deduction u/s 10(14) cannot be claimed in respect of incentive bonus. An argument was advanced to the effect that the Development Officers incurred a lot of expenditure in holding seminars, in extensive travelling and in providing refreshments to the LIC agents and others and, therefore, 40 per cent of the incentive bonus should, in any event, be allowed as deduction. While answering such an argument, it is found out that section 101 (sic) specifies the income as chargeable to Income Tax under the head "Salary". The words "salary", "perquisite" and "profits in lieu of salary" are defined in section 17, for the purpose of sections 15 and 16. Section 16 enumerates deductions, which are deductible in computing the income chargeable under the head "Salary". Andhra Pradesh High Court observed that from a reading of the above provisions, it follows that incentive bonus, whether treated as part of the salary or perquisite, is taxable under the head "Salary" and the permissible deductions under the said head are as specified u/s 16. It was further contended before the Andhra Pradesh High Court that the said expenditure would be allowable u/s 10(14) and the Court pointed out that to enable the assessee to take advantage of section 10(14), there must be a notification by the Central Government specifying the extent to which the expenses are allowable. Till now, no such notification was issued by the Central Government and, therefore, deduction u/s 10(14) cannot be claimed.

6. In M. Krishna Murthy and Others Vs. Commissioner of Income Tax, Andhra Pradesh, Hyderabad and Others, it was held that incentive bonus would fall within the meaning of "perquisite". In B. Chinnaiah's case (supra), the Andhra Pradesh High Court followed its own earlier decision in the case of K. A. Chowdary (supra) in order to come to the conclusion that incentive bonus is nothing but salary.

7. In Notification No. S.O. 143 (E) dated 21-2-1989 (published in Chotey Lal Vs. Commissioner of Wealth Tax, , is as follows :

"In exercise of the powers conferred by sub-clause (i) of clause (14) of section 10 of the Income Tax Act, 1961 (43 of 1961), the Central Government hereby specifies the following special allowances, specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit, for the purposes of the said sub-clause, namely :-

(a) any allowance (by whatever name called) granted to meet the cost of travel on tour or on transfer."

In the said Notification, additional conveyance allowance and incentive bonus did not find place. Therefore, the fact remains that as contemplated u/s 10(14)(i) no notification was issued by the Central Government with regard to the said two items. The assessee claimed deduction of the above said two items by considering the same as "profits in lieu of salary" as defined in section 17 for the purpose of deduction under sections 15, 16, etc. Even "profits in lieu of salary" would come under the purview of "salary" and any deduction claimed under the head of "Income" would have to satisfy section 16. u/s 16, only standard deduction is allowable and no other deduction claimed under any head in the name of expenditure incurred can be allowed.

7.1 The contention of the learned counsel for the assessee was that the incentive bonus and the additional conveyance allowance would come neither under the head "Salary" nor can it be said that only standard deduction alone is permissible, treating the abovesaid two items as salary. According to the learned counsel, the net income after deducting the expenditure and the loss should be arrived at and the net income alone is taxable and the LIC itself had granted incentive bonus as well as additional conveyance allowance treating the same under the head "Salary". Even in the return filed, the assessee claimed exemption u/s 10(14). It was ultimately held in the above said decisions that the additional conveyance allowance and 40 per cent of the incentive bonus, even if they come under the head "Profits in lieu of salary", can be treated as salary income. It is pertinent to note that the Rajasthan High Court in CIT v. Sheo Raj Bhatia, while considering the question of deduction of incentive bonus held that incentive bonus paid by the LIC to the Development Officers is an emolument of the office which is paid by the LIC to its employee, i.e. the Development Officer and the same is, therefore, part of salary only eligible for deductions permissible u/s 16 and that the CBDT Circular No. 14-9-65 IT(AI) dated 22-9-1965 allowing deductions from commission applies only to LIC agents and not to Development Officers.

8. According to the learned counsel for the assessee, the benevolent circular is binding on the authorities below and such circulars cannot be ignored. In order to support this contention, reliance was placed upon the various decisions of various High Courts. There is no doubt about the fact that any benevolent circular issued by the Central Government is binding on the authorities below and the same cannot be ignored.

9. The learned counsel for the assessee, relying upon the letter dated 28-11-1986 from the Deputy Secretary to the Government of India addressed to Shri R. Narayanan, Managing Director, LIC, contended that the incentive bonus and the additional conveyance allowance can be allowed as deduction u/s 10(14) on the basis of the certificate appended to the salary certificate. But, in the said letter, it is stated as under :

"Necessary instructions are being issued to the field officers in respect of exemption u/s 10(14) of the Income Tax Act, 1961, of the Additional conveyance

allowance on the basis of a certificate appended to the salary certificate.

As regards the exemption of incentive bonus, the Board regrets its inability to accede to your request. However, you are advised to formulate a scheme of special allowance with reference to the expenditure incurred in the course of official duties and inform the Board so that the matter may be considered further."

It is to be noted that this circular was issued prior to the amendment to section 10(14).

10. Reliance was also placed upon the letter written by the CBDT to one N. M. Goverdhan, Chairman, LIC, Mumbai, wherein it is stated as follows :

"Your request for notifying "incentive bonus" under sub-clause (i) of 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."

Reliance was also placed upon another letter dated 10-4-1997 issued by the CBDT to the Chief Commissioner, wherein it is stated :

"It has come to the notice of the Board that in some charges, reliance is being placed by the Development Officers of LIC before the appellate authorities on an incorrect appreciation of an earlier letter of the Board and thereby a part of the incentive bonus is being claimed as exempt u/s 10(14)(i) of the Income Tax Act. However, the correct position regarding the claim of the exemption is discussed in the enclosed letter. This may please be brought to the notice of all concerned in your region."

In F. No. 149/25/96-TPL issued by the CBDT dated 12-3-1997, addressed to the Chairman, LIC, Mumbai, it is stated as under :

"Your Circular No. KTG (2D)/4/97 dated 18-2-1997 enclosed with your letter has been examined but the advice contained therein does not appear to be in accordance with the provisions of the Income Tax Act. Unless an allowance is notified u/s 10(14)(i), no portion of it can qualify for tax exemption.

"On the other hand, the Ministry of Law have advised that it is not possible to notify the "incentive bonus" under the said provision.

However, such portion of the "incentive bonus" which is actually spent by the Development Officers for duties of office can still be exempted from tax if the LIC makes the payment against the expenses incurred by the Development Officers by way of reimbursement of expenses. In that case, such reimbursement will not form a part of the "salary" of the Development Officers and only the taxable "incentive bonus" will appear in their salary certificates.

In view of the above, you may kindly issue appropriate instructions for modifying the aforesaid circular of the LIC."

Even according to this notification, unless the allowance is notified u/s 10(14)(i), no portion of it can be qualified for tax exemption. It is further stated that such portion of the incentive bonus which is actually spent by the Development Officers for duties of office can still be exempted from tax, if the LIC makes the payment against the expenses incurred by the Development Officers by way of reimbursement of expenses and such reimbursement will not form a part of the salary of the Development Officers. In the present case, there is no reimbursement of the expenditure incurred by the Development Officers and, therefore, the expenditure incurred by the Development Officers by themselves cannot qualify for exemption u/s 10(14)(i).

11. Reliance was also placed upon the Notification GSR. 606 (E) dated 10-6-1989 wherein it is stated that any allowance granted to meet the expenditure incurred on conveyance in the performance of the duties of an office or employment of profit shall qualify for deduction u/s 10(14)(i). Only when there is reimbursement of the expenditure incurred, deduction u/s 10(14) can be claimed. When the Development Officer himself incurred the expenditure, for those expenses he can't claim exemption u/s 10(14)(i). Though in the earlier letters and circulars issued by the CBDT some concessions were given, those circulars really pertained to the period prior to the amendment brought out to section 10(14). The circular issued by the CBDT after the amendment to section 10(14) clearly states that if the expenditure is reimbursed by the LIC, that would qualify for deduction u/s 10(14). But, if the expenditure was incurred by the Development Officer himself, he cannot claim deduction u/s 10(14)(i).

12. The learned counsel for the assessee relied upon a Division Bench decision of the Andhra Pradesh High Court in CIT v. Muralidhara Rao [income tax Case Nos. 160 and 196 of 1985], dated 13-8-1986. In the said cases, while dealing with petitions u/s 256(2) of the Act, the following questions were sought to be referred :

(a) The Tribunal is not justified in upholding the appellate authority's decision in allowing 40% of the incentive bonus as allowable expenditure while assessing income under the head "Salaries"; and

(b) The Tribunal failed to note that the assessee, a salaried employee in LIC, is not eligible for any deduction towards expenses on the amount received from his employer in the absence of any provision for such deduction.

It was held therein that no case has been made out for compelling the Tribunal to draw a case and refer the questions to Court u/s 256(2). Rejecting the petitions filed u/s 256(2) will not render the decision of another Division Bench in B. Chinnaiah's case (supra), negated. In the said decision, the matter in question was dealt with in detail in accordance with the law on the subject. So also, the contention put forward by the learned counsel for the assessee that the judgement rendered in K. A. Choudary's case (supra), is per curiam, also holds no water.

13. Thus, considering the facts arising in this case, in the light of the relevant provisions contained in the Act and the judicial pronouncements of various High Courts, we are of the opinion that the Tribunal was not correct in allowing the deductions claimed under the head "Additional conveyance allowance" and 40 per cent of the incentive bonus. In that view of the matter, we answer the question referred to us in the negative and in favour of the department. There will be no order as to costs.