
(1997) 03 MAD CK 0070
In the Madras High Court
Case No : Tax Case No. 131 of 1997

Commissioner of Income Tax

APPELLANT

Vs

E.A. Rajendran

RESPONDENT

Date of Decision : 22-03-1997

Acts Referred:

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

Citation : (1997) 03 MAD CK 0070

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

Bench : Division Bench

Advocate : S.V. Subramaniam, for the Appellant; T.C.A. Ramanujam, for the Respondent

Judgement

Thanikkachalam, J.—At the instance of the Department, the Tribunal referred the following questions for the opinion of this Court under s.

256(1) of the IT Act, 1961 :

Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the entire ""amount of additional conveyance

allowance and 40 per cent of incentive bonus received by the assessee as an employee of LIC of India is exempt ?

2. The assessee is a Development Officer in Life Insurance Corporation of India (for short ""LIC""), and has received incentive bonus and also

additional conveyance allowance to cover the expenses incurred by him on account of conveyance. The AO rejected the claim of the assessee that

the additional conveyance and incentive bonus have to be exempted from tax. On appeal, the Dy. CIT(A) allowed 40 per cent of the incentive

bonus as deduction and also deleted the addition made by the AO with regard to the additional conveyance allowance, following the decision of

the Tribunal in ITA Nos. 1691 and 1692/Mad/88 in the case of T. S. Sivaram. 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, learned senior standing counsel (IT) submitted as under :

The circular dt. 28th November, 1986 issued by the CBDT will not be applicable after the amendment brought out to s. 10(14) of the IT Act,

1961 (hereinafter referred to as "the Act") by the Taxation Laws Amendment Act, (Act 4) of 1988, which came into effect from 1st April, 1989.

After coming into force of amendment as per s. 10(14)(i) of the Act, special allowance or benefit, not being in the nature of a perquisite within the

meaning of cl. (2) of s. 16, specifically granted to meet 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 (sic). According to the learned senior standing counsel, the notification as contemplated under 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. Chinniah and Others, .

According to the senior standing counsel, if deduction is claimed under s. 16 of the Act as salary, only standard deduction as contemplated under

the provisions contained in s. 16 alone 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 under s. 10(14)(i) of the Act nor under s. 16 of the Act. It was further

submitted that a notification was issued specifying special allowances under sub-cl. (i) of sub-s. (14) of s. 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 under s. 10(14)(i) of the Act in

Notification No. GSR. 606 (E) dt. 9th June, 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 allowance 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 under s. 16 of the Act. 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.

On the other hand, Mr. T. C. A. Ramanujam, learned counsel appearing for the assessee submitted as under : Sec. 17(1) of the Act defines the expression "Salary" for the purpose of ss. 15, 16 and 17 of the Act, by way of an inclusive definition. Sec. 17(2) defines ""perquisites"" and s. 17(3) defines ""profits in lieu of salary"". All the three definitions are inclusive and not exhaustive. Sec. 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 r. 2(h) of Part "A" of IV schedule to the Act. Sec. 17(3) (i) defines the term ""profits in lieu of salary"". The use of the term "profits" is significant, whether it is s. 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 s. 4. Unless a receipt can be brought in as ""income"" under s. 4, it cannot be taxed. This was laid down long ago by the Privy Council in CIT vs. Chitnavis [AIR 1932 (SC) 178]. Sec. 28 and s. 29 provide for the determination of profits and gains of business or profession with reference to the provisions contained in ss. 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 under 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 s. 28 will equally be applicable to the determination of "Profits in lieu of salary" under 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 vs. CIT (1988) 174 ITR

58 : TC 23R.888).

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 under s. 16 of the Act, came up for consideration in B.

Chinnaiah's case (supra), before the Andhra Pradesh High Court. Following the earlier decision in K.A. Choudary Vs. Commissioner of Income

Tax and Others, , 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 s. 10(14) of the Act, 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 under s. 10(14) cannot be claimed in

respect of incentive bonus. An argument was advanced to the effect that 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 s. 15 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 s. 17, for the purpose of ss. 15 and 16. Sec.

16 of the Act enumerates deductions, which are deductible in computing the income chargeable under the head ""salary"". 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 under s. 16 of the Act. It was further contended before the Andhra Pradesh High

Court that the said expenditure would be allowable under s. 10(14) of the Act and the Court pointed out that to enable the assessee to take

advantage of s. 10(14) of the Act, 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 under s. 10(14) of the Act 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), Andhra Pradesh High Court followed its own earlier decision in

the case of *K. A. Choudary* (supra) in order to come to the conclusion that incentive bonus is nothing but salary.

In Notification No. S.O. 143(E) dt. 21st February, 1989 [published in *Chotey Lal Vs. Commissioner of Wealth Tax*,], is as follows :

In exercise of the powers conferred by sub-cl. (i) of cl. (14) of s. 10 of the IT 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 purpose 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

under s. 10(14)(i) of the Act, no notification was issued by the Central Government with regard to the said two items. The assessee claimed

deduction of the abovesaid two items by considering the same as ""profits in lieu of salary"" as defined in s. 17 for the purpose of deduction under ss.

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 s. 16. Under 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. 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 under s. 10(14) of the Act. It was ultimately held in the abovesaid 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 vs. 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 under s. 16 of the Act,

and that CBDT Circular No. 14/9/65-IT (A1) dt. 22nd September, 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 dt. 28th November, 1986 from the Dy. 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 under 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 under s. 10(14) of the IT 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 noticed that this circular was issued prior to the amendment to s. 10(14) of the Act.

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

Your request for notifying "incentive bonus" under sub-cl. (1) of cl. (14) of s. 10 of the IT 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 dt. 10th April, 1997 issued by the CBDT to the Chief CIT, 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 under s. 10(14)(i) of the IT 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, dt. 12th March, 1997, addressed to the Chairman, LIC Mumbai, it is stated as under :

Your Circular No. SKTG (2D)/4/97 dt. 18th February, 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 IT Act. Unless an allowance is notified under 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 under s. 10(14)(i) of the Act, 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 under s. 10(14)(i) of the Act.

11. Reliance was also placed upon the Notification GSR 606 (E) dt. 10th June, 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 under s.

10(14)(i) of the Act. Only when there is reimbursement of the expenditure incurred, deduction under s. 10(14) can be claimed. When the

Development Officer himself incurred the expenditure, for those expenses he cannot claim exemption under s. 10(14)(i) of the Act. Though in the

earlier letters and circulars issued by the CBDT, some concessions were given, those circulars really pertain to the period prior to the amendment

brought out to s. 10(14) of the Act. The circular issued by CBDT after the amendment to s. 10(14) of the Act clearly states that if the expenditure

is reimbursed by the LIC that would qualify for deduction under s. 10(14) of the Act. But, if the expenditure was incurred by the Development

Officer himself, he cannot claim deduction under s. 10(14)(i) of the Act.

12. Learned counsel for the assessee relied upon a Division Bench decision of the Andhra Pradesh High Court dt. 13th August, 1986 in IT Case

Nos. 160 and 196 of 1985 (CIT vs. Muralidhara Rao). In the said cases, while dealing with petitions under 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 per cent 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 drawing a case and refer the questions to Court under s. 256(2)

of the IT Act, 1961. Rejecting the petitions filed under s. 256(2) of the Act 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 judgment rendered in 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.