(2002) 08 RAJ CK 0040

In the Rajasthan High Court

Case No : IT Ref. No. 37 of 1998

Commissioner of Income Tax APPELLANT

Vs

G.D. Sharma RESPONDENT

Date of Decision : 19-08-2002

Acts Referred:
Income Tax Act, 1961 — Section 143(1), 154

Citation : (2003) 180 CTR 169 : (2003) 131 TAXMAN 292

Hon'ble Judges : Y.R. Meena, J;Shashi Kant Sharma, J

Bench : Division Bench

Advocate : Anuroop Singh, for J.K. Singhi, for the Appellant; None, for the Respondent

Judgement

1. On an application filed u/s 256(1) of the IT Act, 1961, the Tribunal has referred the following question for the opinion of this Court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in upholding the order of the learned Dy. CIT(A) on the ground that the issue before him was debatable and hence could not be considered as a mistake apparent on record rectifiable u/s 154, despite the fact that when the Tribunal decided the appeal, the issue was no longer debatable as far as the State of Rajasthan was concerned, in view of the decision of the Hon''ble Rajasthan High Court in the case of CIT v. Shiwai Bhatia (DB IT Ref. No. 8 of 1992 dt. 1st May, 1996) "

2. While processing the return u/s 143(1)(a) of the IT Act, 1961, the AO made disallowance of Rs. 12,054 claimed as deduction by the assessee from incentive bonus earned by him, in his capacity as Development Officer of LIC. The assessee moved an application u/s 154 seeking rectification of the intimation to the effect that incentive bonus was separate from salary income and hence that expenditure incurred to earn the same should have been allowed. The AO rejected the application of the assessee vide his order dt. 12th July, 1991.

In appeal before the Dy. CIT(A), the Dy. CIT(A) has allowed the claim of the assessee on the ground that the allowability of expenses from the income of incentive bonus was a debatable issue and hence could not fall within the scope of proviso as contemplated in Section 143(1)(a) of the Act. In appeal before the Tribunal, the Tribunal has confirmed the view taken by Dy. CIT(A).

3. Heard learned counsel for the petitioner. None appeared for the respondent.

4. The facts stated above are not in dispute that assessee has claimed the deduction of expenditure from incentive bonus received by him. The fact is also not in dispute that assessee is an employee of LIC. Consistent view has been taken by this Court since the case of CIT v. Shivraj Bhatia, that when Development Officer of the LIC is an employee of the LIC and he received any amount in the form of incentive bonus, no deduction can be allowed to the employee. If he received anything from the employer, only standard deduction can be allowed to the employee and no other type of deduction in the form of expenditure can be allowed. That view has been taken by the AO in this case, though in intimation u/s 143(1)(a).

Thereafter, assessee moved an application u/s 154. Section 154 provides only for corrections of apparent mistakes. As there was no apparent mistake and issue involved is debatable, AO cannot correct the mistake on a debatable issue u/s 154 of the Act.

5. Following the consistent view taken by this Court in the case of CIT v. Shivraj Bhatia (supra) and considering the fact that issue involved is debatable, that cannot be corrected in order u/s 154 of the Act, 1961. In our view, the Tribunal has committed error in allowing the claim of the assessee.

In the result, we answer the question in negative i.e., in favour of the Revenue and against the assessee.