(1995) 01 OHC CK 0003

In the Orissa High Court

Case No : S.J.C. No. 146 of 1990

Commissioner of Income Tax APPELLANT

Vs

Govind Chandra Pani RESPONDENT

Date of Decision : 04-01-1995

Acts Referred:
Income Tax Act, 1961 — Section 15, 16, 17, 17(1)

Citation : (1995) 126 CTR 359

Hon'ble Judges : K.L. Issrani, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : Ray, for the Appellant; None, for the Respondent

Judgement

G.B. Patnaik, J.—On an application being filed u/s 256(1) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal has formulated the following questions for the opinion of this court :

" (i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the incentive bonus received by the assessee can be assessed as income from profession and deduction at the rate of 40 per cent. be allowed on account of expenses ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the assessee being an employee of the Life Insurance Corporation of India and deriving both salary and incentive bonus could not be assessed u/s 16 of the Income Tax Act, 1961, in respect of his incentive bonus receipt ?

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was right to endorse the view of the Appellate Assistant Commissioner of Income Tax in holding that the term ''salary'' as defined in Section 17 would not include ''incentive bonus'' ?"

2. Questions Nos. 2 and 3 are really one and the same question and, therefore,

after hearing learned standing counsel for the Revenue, we reframe only one question in relation to questions Nos. 2 and 3 already, formulated by the Tribunal, the same being :

" Whether the incentive bonus which the assessee as the Development Officer gets from the employer, Life Insurance Corporation, can be held to be ''salary'' within the ambit of Section 17 of the Income Tax Act and as such would be chargeable under the head ''salary'' u/s 16 of the Act ?"

3. For the assessment year 1984-85, the Assessing Officer had received a return from the assessee showing the total income at Rs. 16,210. On discussion with the assessee, the Income Tax Officer found that the assessee had received a sum of Rs. 26,466 as incentive bonus. Treating the same to be income from other sources, the assessee had claimed 40 per cent. of the same as deduction. The Income Tax Officer did not accept the claim of the assessee and held that the incentive bonus does form a part of the salary and once it is treated to be salary, then no other deduction other than the deduction provided in Section 16 of the Act can be allowed. With these conclusions, the Income Tax Officer completed the assessment proceeding. Against the aforesaid order of the Income Tax Officer, the assessee preferred an appeal which was heard by the Assistant Commissioner of Income Tax. The appellate authority agreed with the contention of the assessee and held that the incentive bonus was not a part of salary as the definition of "salary" as given in Section 17 of the Act has avoided the use of the word "bonus". It further held that the claim of the assessee claiming deduction of 40 per cent. towards expenses from the incentive bonus received should be allowed. The assessee''s appeal thus being allowed, the Revenue carried the matter in second appeal to the Tribunal. The Tribunal by a rather cryptic order having dismissed the appeal and confirmed the conclusion of the appellate authority, the Revenue filed an application u/s 256(1) of the Income Tax Act and, ultimately, the Tribunal referred the questions as already stated.

4. Mr. Ray, learned standing counsel appearing for the Revenue, contends that the incentive bonus which is received by an employee of the Life Insurance Corporation is nothing but remuneration or recompense for the services rendered by the employee but is determined at a fixed percentage of the turnover achieved by him and, therefore, it partakes of the character of salary within the ambit of Section 17 of the Act. According to learned standing counsel, the definition of salary u/s 17 being an inclusive definition, it enlarges the meaning of the word "defined" and the appellate authority was wholly in error in holding that the legislature having avoided the use of the word "any bonus" in Section 17 is indicative of the legislative intent that bonus would not be a part of salary. The aforesaid contentions require a careful examination of the provisions of Sections 16 and 17 of the Act and the rules of interpretation in relation to the word "includes" without use in interpretation Clause (sic).

5. u/s 14 of the Act, income can be classified for the purposes of charge of Income Tax and computation of total income into five heads, of which "salaries"

is one. Chapter IV of the Act having Sections 14, 15, 16 and 17 deals with the computation of total income from salaries. Section 17(1) provides that for the purposes of Sections 15 and 16, "salary" includes -- (iv) any fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages. The question that arises for consideration in the present case is whether the incentive bonus which an employee of the Life Insurance Corporation receives apart from his salary can come within the aforesaid provision contained in Section 17(1)(iv).

6. It is an accepted rule of interpretation of statutes that the word "includes" is used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the "statute" and when it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import, but also those things which the interpretation clause declares that they shall include.

7. In The Corporation of the City of Nagpur Vs. Its Employees, , their Lordships of the Supreme Court held (at page 680) :

" The inclusive definition is a well recognised device to enlarge the meaning of the word defined, and, therefore, the word ''industry'' must be construed as comprehending not only such things as it signifies according to its natural import but also those things the definition declares that it should include."

8. In view of the aforesaid rule of interpretation, the inclusive definition of salary in Section 17 was erroneously construed by the Assistant Commissioner solely on the ground that the expression "bonus" is not there in Section 17. Section 17 defines the expression "salary" for the purposes of Sections 15 and 16, which deals with "salary" as a head of income and under Clause (iv) of Sub-section (1) that expression includes any fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages. According to the Shorter Oxford English Dictionary (Third edition) "salary" means :

"to recompense, reward ; to pay for something done." The expression "salary" came up for consideration before their Lordships of the Supreme Court in the case of Gestetner Duplicators Pvt. Ltd. Vs. Commissioner of Income Tax, West Bengal, and their Lordships held (at page 12) :

" It will thus appear clear that conceptually there is no difference between salary and wages, both being a recompense for work done or services rendered, though ordinarily the former expression is used in connection with services of non-manual type while the latter is used in connection with manual services."

9. Their Lordships further held that if under the terms of the contract of employment remuneration or recompense for the services rendered by the employee is determined at a fixed percentage of the turnover achieved by him then such remuneration or recompense will partake of the character of salary, the percentage basis being the measure of the salary.

10. The Income Tax Officer having examined the details of the scheme of award

of the incentive bonus found that the same was calculated on a percentage basis on the total first year''s scheduled premium income secured by the employees who are assigned to work under the jurisdiction of a Development Officer. On examining the terms and conditions of appointment of the Development Officer, the said Income Tax Officer had found that it is the duty of such officer to develop and increase the production of life insurance business through the agents placed under his supervision and to render all such services to the policy holders conducive to better policy-servicing. This finding of the Income Tax Officer has not been reversed by the appellate authority but the appellate authority being of the opinion that since the employee puts in extra effort and secures the stipulated amount of business for getting the incentive bonus, the said bonus cannot be held to partake of the character of salary. In our considered opinion, the appellate authority was wholly in error. 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 Commissioner of Income Tax Vs. Bijay Kishore Kapoor, . A Bench of this court, following the decision of the Supreme Court in Gestetner Duplicators Pvt. Ltd. Vs. Commissioner of Income Tax, West Bengal, , 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.

11. In the aforesaid premises, we answer the question formulated by us in favour of the Department and against the assessee and hold that the incentive bonus which the assessee as the Development Officer gets from the employer, the Life Insurance Corporation, partakes of the character of salary as defined u/s 17 of the Income Tax Act and is chargeable to Income Tax u/s 16 of the Act.

12. So far as question No. 1 formulated by the Tribunal is concerned, in view of our earlier answer to the question formulated by us, once it is held that it is salary, then the only deductions that can be claimed and available are u/s 16 of the Act, and consequently the Tribunal was not justified in allowing deduction at the rate of 40 per cent. on account of expenses. Both the questions are answered in favour of the Department and against the assessee.

K.L. Issrani, J.

13. I agree.

