
(1996) 05 MP CK 0009
In the Madhya Pradesh High Court
Case No : M.C.C. No. 484 of 1991

Commissioner of Income Tax

APPELLANT

Vs

G.S. Jhamad

RESPONDENT

Date of Decision : 13-05-1996

Acts Referred:

Income Tax Act, 1961 — Section 256

Citation : (1997) 227 ITR 219

Hon'ble Judges : N.K. Jain, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : D.D. Vyas, for the Appellant; S.C. Bagdiya, for the Respondent

Judgement

A.R. Tiwari, J.—The applicant (Commissioner of Income Tax, Bhopal), has filed this application u/s 256(2) of the Income Tax act, 1961 (for short "the Act"), seeking a direction to the Tribunal to state the case and refer the question as extracted below arising out of the order dated March 30, 1990, passed by the Tribunal in I. T. A. No. 653/Ind of 1988 after rejection of the application, presented u/s 256(1) of the Act, registered as R. A. No. 142/Ind of 1990 for the assessment year 1981-82 on June 10, 1991 :

" Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that incentive bonus and additional conveyance allowance granted to the Development Officer of the Life Insurance Corporation was not a part of salary and that the assessee was entitled to claim 40 per cent, expenses out of it ?"

2. Briefly stated, the facts of the case are that the claim of 40 per cent, expenses from the receipts of incentive bonus and additional conveyance allowance was negated by the Income Tax Officer and the Appellate Assistant Commissioner. The Tribunal, however, allowed the appeal of the assessee holding that the incentive bonus and additional conveyance allowance was not part of the salary and 40 per cent, expenses were allowable from it. The Tribunal based its order

on decisions in ITO v. Rajkumar Sethi--135 of selected orders of the Income Tax Appellate Tribunal and Sixth ITO v. Narendra V. Patel [1985] 11 ITD 587 (Bom) and other cases. The Department felt that the order of the Tribunal was erroneous in view of the decision in K.A. Choudary Vs. Commissioner of Income Tax and Others, , rendered by the Andhra Pradesh High Court, and it filed an application u/s 256(1) of the Act which was rejected. The application submitted u/s 254(2) of the Act was also rejected. The Department thereafter filed this application u/s 256(2) of the Act.

3. We have heard Shri D. D. Vyas, learned counsel for the applicant/ Department, and Shri S. C. Bagdiya, learned counsel for the non-applicant/ assessee.

4. Counsel for the applicant pointed out that in common order dated March 1, 1996, passed by this court in Misc. Civil Case No. 203 of 1992- Commissioner of Income Tax Vs. Mangilal Jain and S.C. Nigam, , and other connected five Misc. Civil Cases, an identical question was considered and eventually a direction was made to the Tribunal to state the cases and refer the question as reshaped and reformulated therein. The reshaped and reformulated question reads as under (page 100) :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee was entitled to claim 40 per cent, expenses out of the amount received by him by way of incentive bonus or commission ?"

5. Counsel for the applicant submitted that the same question, as is called for in the aforesaid cases, be called for in this case also.

6. It is seen that there are conflicting decisions on the point involved as is clear from ITAT v. Narendra Patel [1985] 11 ITD 587 (Bom) and K.A. Choudary Vs. Commissioner of Income Tax and Others, .

7. The core question is whether the assessee is entitled to get deduction of 40 per cent, by way of expenses incurred in earning the incentive bonus or commission or is entitled only to get standard deduction.

8. It is noticed that a proviso to Section 10(14) of the Act is inserted by the Direct Tax Laws (Second Amendment) Act, 1989, effective from April 1, 1989, which reads as under :

" Provided that nothing in Sub-clause (ii) shall apply to any allowance in the nature of personal allowance granted to the assessee to remunerate or compensate him for performing duties of a special nature relating to his office or employment unless such allowance is related to the place of his posting or residence ;"

9. This court has held in Misc. Civil Case No. 69 of 1991- Commissioner of Wealth-tax Vs. Smt. Gayatridevi,), that in case of conflict of opinion a referable question does arise and is required to be answered by this court so as to settle

the controversy.

10. In view of the aforesaid position, we allow this application and call upon the Tribunal to state the case and refer the aforesaid reshaped and reformulated question of law for our consideration and opinion.

11. We, however, make no order as to costs.

12. Counsel fee for each side is, however, fixed at Rs. 750, if certified.

13. Transmit a copy of this order to the Tribunal immediately. The Tribunal is directed to make an endeavour to comply with the direction issued by us within ten months from the date of the receipt of the copy of this order by it.