(1996) 05 RAJ CK 0039

In the Rajasthan High Court

Case No : DB IT Ref. No. 13 of 1992, 1st May, 1996

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

JAG MOHAN GOYAL. — RESPONDENT

Date of Decision : 01-05-1996

Acts Referred:
Income Tax Act, 1961 — Section 16, 256

Citation : (1996) 134 CTR 90

Hon'ble Judges : B. R. Arora, J

Bench : Division Bench

Judgement

B. R. ARORA, J. :

The Tribunal, Jaipur Bench, Jaipur, for the asst. yr. 1983-84, in the case of the assessee, by its order dt. 11th March, 1991, referred the following question of law under s. 256(1) of the IT Act, for the opinion of this Court :

"Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in allowing Rs. 6,216 as expenses for earning incentive bonus of Rs. 15,540 from the LIC of India for the asst. yr. 1983-84 ?"

2. The assessee was working as the Development Officer in the Office of the LIC of India. During the previous year to the asst. yr. 1983-84, the assessee received a sum of Rs. 15,540 as incentive bonus. The assessee, on this amount of Rs. 15,540, claimed the deduction @ 40% amounting to Rs. 6,216. The ITO, District Siriohi, by its Order dt. 27th Jan., 1986 treated the incentive bonus as the part of the salary and allowed only the standard deduction and the claim of the assessee for additional expenses amounting to Rs. 6,216 as the 40% of the incentive bonus, was disallowed. Dissatisfied with the order dt. 27th Jan., 1986 passed by the ITO, the assessee preferred an appeal before the Dy. CIT(A), Jodhpur. The appeal filed by the assessee was allowed by the Dy. CIT(A) on the basis of the judgment of the Tribunal, Jaipur Bench, Jaipur, given in Moti Lal Mohnot vs. ITO. While allowing the appeal, the Dy. CIT(A) directed the ITO to allow the expenses

claimed by the assessee as they are the allowable expenses.

3. Dissatisfied with the order dt. 29th Dec., 1988 passed by the Dy. CIT(A) the Revenue preferred an appeal before the Tribunal, Jaipur Bench, Jaipur and the Tribunal, by its order dt. 19th Jan., 1990 following its own order passed in ITA No. 334 and 335/Jp/1987 in the case of R. P. Kuteta, dismissed the appeal filed by the Revenue. The Revenue, aggrieved with the order dt. 19th Jan., 1990 passed by the Tribunal, moved an application under s. 256(1) of the Act to refer the questions of law mentioned in the application for the opinion of the High Court and the Tribunal, by its order dt. 11th March, 1991 referred the question mentioned in para No. 1 of this judgment for the opinion of this Court.

4. The material facts, on which the question mentioned in para 1 above has to be decided is similar to those in DBIT Ref. No. 8 of 1992 [CIT vs. Shiv Raj Bhatia (1996) 133 (Raj) 379 The controversy involved in the present case as well as the case of Shiv Raj Bhatia is that the incentive bonus received by the Development Officer of the LIC : whether can fall within the meaning of the words salary, perquisites or profit in lieu of salary and as such is taxable under the head salary or it is an income from business or profession on which the assessee is entitled for deduction in respect of the amount which he spent for procuring the business to earn the incentive bonus and whether the Boards Circular No. 14/9/65-IT(A-I) dt. 22nd Sept., 1965, which, in fact, is applicable to the LIC agents, is applicable to the Development Officers or not ? It has been held in CIT vs. Shiv Raj Bhatias case decided by us today that the incentive bonus paid to the Development Officer is not the personal gift but is paid as remuneration for his services as the employee and, therefore, it forms the part of the salary. As the incentive bonus is the part of the salary of the assessee and is exigible to tax and the assessee is entitled only for the standard deduction permissible under s. 16 of the Act only. It has further been held in Shiv Raj Bhatias case that the Boards Circular No. 14/9/65-IT (A-I) dt. 22nd Sept., 1965, which relates to the agents of the LIC only, is not applicable in the cases of the Development Officers.

5. The question of law referred for the opinion of this Court, mentioned in para 1 above, is identical to that which was referred for the opinion of this Court in Shiv Ram Bhatias case (supra) and this Court, in Shiv Raj Bhatias case, answered the question in the negative, i.e., in favour of the Revenue and against the assessee. For the same reasons, the above quoted question No. 1 is answered in favour of the Revenue and against the assessee in the same manner.

6. Consequently, the reference is answered in negative, i.e., in favour of the Revenue and against the assessee and it is held that the Tribunal, Jaipur Bench, Jaipur was not justified in directing to allow Rs. 6,216 as expenses for earning the incentive bonus of Rs. 15,549 from the LIC of India for the asst. yr. 1983-84, relying on the Boards Circular which is applicable only to the LIC agents and not to the Development Officers and the cases of the Development Officers are governed by the Boards Circular No. 1774.

