
(2015) 06 CAL CK 0003
In the Calcutta High Court
Case No : IT Appeal No. 230 of 2005

Commissioner of Income Tax

APPELLANT

Vs

Kishore Kumar Paul

RESPONDENT

Date of Decision : 16-06-2015

Acts Referred:

Income Tax Act, 1961 — Section 10(14), 10(14)(i), 10(4), 14(3)(i), 143(1)

Citation : (2015) 234 TAXMAN 154

Hon'ble Judges : Soumitra Pal and Mir Dara Sheko, JJ.

Bench : Division Bench

Advocate : Nizamuddin and P. Dhodhoria, Advocates, for the Appellant

Judgement

1. Let affidavit of service filed in Court today be kept on record. Despite service of notice none appears on behalf of the respondent-assessee.

1.1 Heard the learned counsel for the appellant.

1.2 The appeal was admitted on two questions. The question No. 1 is as follows:--

"1. Whether on the facts and in the circumstances of the case Tribunal was justified in law in upholding the order of Commissioner of Income-tax (Appeals) allowing the Additional Conveyance allowance as an eligible exemption under section 10(14) of the Income-tax Act, 1961 in view of Circular No. 701 dated 20.03.1995 and guideline framed by the CBDT F No. 275/11/2001-IT(B), dated 1.02.2001?"

Since there are typographical mistakes, the question No. 2 is reformulated in the manner as under:

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in allowing additional conveyance allowance in terms of notification No. GSR 606 (E), dated 9th June, 1989 where it is clearly specified that any allowance granted to meet the expenditure incurred on conveyance in the performance of duties of an office or employment of profit shall only qualify

for consideration and so far as the relevant certificate issued by the employer against the impugned amount of Additional Conveyance allowance is concerned, no absolute inference can be drawn that the same was incurred by the assessee on conveyance only for the promotion of new business?"

2. In the instant case, the assessee, working as a Development Officer in the Life Insurance Corporation of India (for short the "LIC") had received a sum of Rs. 3,74,013/- from his employer as additional conveyance allowance. In view of two certificates issued by the concerned branch of LIC, exemption was sought for under section 10(14)(i) of the Income-tax Act, 1961. The Assessing Officer after considering the facts and the notifications held that the assessee was not eligible for any deduction claimed under the said section particularly when the notification as contemplated under section 10(14)(i) of the Act was yet to be issued by the Central Government.

3. Aggrieved, the assessee preferred appeal. The CIT(A) allowed the appeal by holding as under:

"Before me, it was submitted on behalf of the appellant that there was no validity for the Assessing Officer's action in not giving exemption for the conveyance allowance and additional conveyance allowance as per the certificate u/s 203 in Form No. 16 and also an exclusive certificate given by the employers with regard to the balance additional conveyance allowance of Rs. 3,74,013/-. The ITAT's judgements in similar cases as also my own decision in a number of such cases relied upon in support of the case.

I have considered the submissions made and looked into the material on record. The Assessing Officer has based the disallowance on the fact that a major part of the additional conveyance allowance was not subjected to tax deduction at source. This may be because the final details of the expenses incurred could not be submitted before the last of making the TDS from the total of the financial year concerned. In any case, it does not vitiate the appellant's claim for full exemption u/s 10(14) of the I.T. Act in view of the two certificates from the Manager, LIC of the concerned branch.

The Assessing Officer is directed to treat both the receipts Rs. 24,564/- and Rs. 4,08,413/- as exempt u/s.10(14) of the I.T. Act. The total income would be reduced to Rs. 11,90,723/- (Rs. 16,23,700/- minus Rs. 24,564/-) say, Rs. 11,90,720/-. It has to be noted that the total income is lesser than the total income returned at Rs. 12,49,490/- by the sum of Rs. 58764/- because the appellant had, inadvertently (in the computation of income) not claimed the deductions of Rs. 24,564/- (conveyance allowance) and Rs. 34,200/- (part of additional conveyance) exempted u/s 10(14) of the I.T. Act in the certificate in Form No. 16, and the Assessing Officer also did not correct this arithmetical error either in the order passed order u/s 143(1) or u/s 14(3)(i) of the I.T. Act.

In the result, the appeal is allowed."

4. Being aggrieved by the order passed by the CIT (A), the Revenue preferred appeal before the learned Income Tax Appellate Tribunal. The Tribunal dismissed the appeal by holding as under:

"Therefore, the issue having been adjudicated and supported by a plethora of judgment the revenue's appeal is devoid of merits. We have considered the rival submissions and perused the material available on record. We do find that this issue has been dealt with by the ITAT, Kolkata Benefits wherein on the basis of certificate issued by the employer to the D.O. was considered as the ultimate liability to claim exemption which was produced before the Assessing Officer. The assessee was, therefore, entitled to claim exemption u/s. 10(4) of the Act in respect of conveyance allowance/additional conveyance allowance upon satisfying the conditions that such allowances have been actually spent for the purpose they were given. In view thereof, we do not find any infirmity in the direction of the Ld. CIT(A) to direct the Assessing Officer to delete the disallowances. In view of the issue being covered by the Coordinating Benches of Kolkata which also supported the decision of the various High Courts as cited on by the Ld. counsel, we have no hesitation in dismissing the appeal filed by the revenue.

In the result, the appeal filed by the revenue is dismissed."

5. Md. Nizamuddin, learned advocate for the appellant, relying on the judgment of Commissioner of Income Tax Vs. E.A. Rajendran, has submitted that since no notification has been issued by the Central Government as postulated under section 10(14)(i) exempting additional conveyance allowance to a salaried employee of LIC and as notification No. GSR 606 (E), dated 9th June, 1989 stipulates for reimbursement when expenditure is actually incurred, as expenses were not reimbursed by the LIC the respondent is not entitled to deduction.

6. There is no dispute that, as evident from the notification dated 9th June, 1989, any allowance granted to meet the expenditure incurred on conveyance in the performance of duties of office or employment of profit shall qualify for deduction under section 10(14)(i) of the Act only when there is reimbursement of the expenditure actually incurred.

7. Further, as per letter of CBDT dated 1st February, 2001 it is evident that the conveyance allowance and additional conveyance allowance paid to the officers of the LIC are not exempted under section 10(14)(i) of the Act. Since in the instant case there is no evidence that the expenditure was reimbursed and as no notification has been issued for exempting additional conveyance allowance under section 10(14)(i), the Tribunal was not justified in dismissing the appeal filed by the Revenue.

8. Before we part, we hasten to add that though the CIT (A) in his order had observed that there are some judgements of the ITAT on this issue and though the Tribunal had held that the issue is covered by the orders passed by the Coordinate Benches of the Kolkata Tribunal and of various High Courts, however,

but we are constrained to observe that there is no such reference in the orders passed by the CIT(A) and the Tribunal. Therefore, the question Nos. 1 and 2 are answered in the negative and in favour of the revenue and against the assessee.

The appeal is allowed.