
(1999) 03 P&H CK 0054
In the Punjab And Haryana At Chandigarh
Case No : ITC No. 21 of 1998

Commissioner of Income Tax

APPELLANT

Vs

L.D. Satija

RESPONDENT

Date of Decision : 20-03-1999

Acts Referred:

Income Tax Act, 1961 — Section 10(14), 143(1), 256(2)

Citation : (1999) 156 CTR 304 : (2000) 246 ITR 629 : (1999) 104 TAXMAN 388

Hon'ble Judges : N.K. Agarwal, J;J.L. Gupta, J

Bench : Division Bench

Advocate : R.P. Sawhney and Rajesh Bindal, for the Appellant; Sanjay Bansal, for the Respondent

Judgement

Jawahar Lal Gupta, J.—CIT submitted an application under s. 256(1) of the IT Act, 1961, before the Tribunal with the request that the following question of law arising out of order dt. 17th January, 1997, be referred to the High Court for opinion :

"Whether, on the facts and in the circumstances of the case, the Hon'ble Tribunal was right in law in deleting the disallowance/adjustment of Rs. 48,834 out of additional conveyance allowance by holding that this adjustment was not permissible under s. 143(1)(a) ?"

The Tribunal having rejected this application, the Revenue has approached this Court through the present petition.

2. A few facts may be noticed :

On 4th July, 1994, the assessee filed an Income Tax return disclosing income of Rs. 3,40,370. He claimed a deduction of Rs. 99,234, which had been paid to him on account of conveyance allowance and additional conveyance allowance. The assessing authority processed the return under s. 143(1)(a) of the IT Act. It allowed a deduction of Rs. 50,400 on account of conveyance allowance and additional conveyance allowance. However, it added back an amount of Rs.

48,834 out of the additional conveyance allowance. Aggrieved by the order, the assessee filed an appeal which was dismissed by the CIT(A). The assessee approached the Tribunal. Vide order dt. 17th January, 1997, the Tribunal accepted the assessee's appeal and held that the assessment having been framed under s. 143(1)(a) of the Act, and no opportunity having been afforded to the assessee, the ITO was not entitled to add back the amount of Rs. 48,834. Thereafter, the Revenue's application for reference having been rejected, it has approached this Court.

3. Mr. R. P. Sawhney, learned counsel for the Revenue, contends that the question of law, as framed by the CIT, arises in the circumstances of this case. Consequently, it should be called for the opinion of this Court. He further states that the issue has, in fact, been settled in IT Ref. No. 562 and 565 of 1995, decided on 22nd December, 1998. He contends that it was held by the Bench that the action of the assessing authority in allowing the deduction partly on the basis of the certificate given by the LIC was valid.

4. The claim made on behalf of the petitioner has been controverted by the learned counsel for the assessee.

5. It is the admitted position that the assessing authority had proceeded under s. 143(1)(a). It is not disputed that no notice was given to the assessee to show as to whether or not the amount of conveyance allowance had been actually spent by him in performing his official duties and procuring additional business for the employer. We are of the view that in the absence of an opportunity to the assessee, the ITO could not have declined his request for deduction. Secondly, it also deserves mention that the reliance of the Revenue on the certificate issued by the LIC was totally ex parte. He was not afforded an opportunity to show that there was any inaccuracy in the certificate and that the certificate was itself ad hoc. It is in view of this fact that the Tribunal had taken the view that the LIC had allowed an exemption "on ad hoc basis without considering provisions of s. 10(14) of the IT Act." It is no doubt true that the ITO was entitled to make prima facie adjustment in the assessment without any notice to the assessee. However, in the present case, it was not a mere prima facie adjustment that he had made. In fact, a definite claim made by the assessee was being negatived. This could not have been done without the grant of an opportunity. If an opportunity had been granted, the assessee may have been in a position to show that the conveyance allowance had been actually used for the purpose for which it had been given. In such a situation, the assessing authority would not have been entitled to make any addition to the declared income.

6. In view of the above reasons we do not find any ground to ask the Tribunal to refer the question to this Court for opinion. The application is, accordingly, rejected. No costs.