
(1995) 02 GAU CK 0030
In the Gauhati High Court
Case No : Civil Rule No. (M) 9 of 1993

Commissioner of Income Tax

APPELLANT

Vs

Ram Krishna Banik

RESPONDENT

Date of Decision : 02-02-1995

Acts Referred:

Income Tax Act, 1961 — Section 15, 256, 28

Citation : (1996) 130 CTR 335

Hon'ble Judges : V.D. Gyani, J;J. Sangma, J

Bench : Division Bench

Advocate : D.K. Talukdar and B.J. Talukdar, for the Appellant; Ashok Saraf and K.K. Gupta, for the Respondent

Judgement

V.D. Gyani, J.—This is an application u/s 256(2) of the Income Tax Act, 1961, seeking a direction to the Tribunal to submit a statement of the case.

2. The basic facts as necessary for disposal of this application are--the assessee is an employee of the Life Insurance Corporation, working as a Development Officer. Apart from salary, he also received incentive bonus, which was included in the tax declaration certificate issued by the employer. The assessee claimed deduction of 40% of the incentive bonus as expenses. The Income Tax Officer, by an assessment order dated March 2, 1989, disallowed it, but on appeal preferred by the assessee it was allowed by the Commissioner of Income Tax (Appeals) who held that the incentive bonus received by the assessee was not as an employee but on account of a contractual arrangement, as such, the deduction as claimed by the assessee was allowable. The Revenue preferred an appeal before the Tribunal which was dismissed on July 15, 1991, so also an application u/s 256(1) on January 20, 1993. Hence, the present application u/s 256(2), seeking the statement of the case on the following questions of law :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal has not erred in law in allowing 40% deduction from the incentive bonus granted by the employer when the incentive bonus is assessable under the head "Salaries" ?

(2) Without prejudice to question No. 1 above, whether incentive bonus comes within the ambit of Clause (iv) of Sub-section (1) of Section 17 of the Income Tax Act, 1961, and if so under which provision of Income Tax law deduction of 40% is allowable from the incentive bonus paid by the employer ?"

3. Mr. Talukdar, learned standing counsel appearing for the Revenue, strenuously urged that the assessee being in regular employment of the Corporation was a salaried servant of the Corporation and not an "agent", and as such, was not entitled to claim 40 per cent. of deduction as expenses on his earning "incentive bonus". Dr. Saraf, learned counsel for the assessee, on the other hand, apart from pointing to the lack of material, submitted that the finding as recorded by the Tribunal being essentially a finding of fact, cannot be interfered with by this court u/s 256(2) of the Act.

4. It cannot be gainsaid that the High Court has to proceed on the basis of the finding of facts as recorded by the Tribunal. It is not open to the court to interfere with a finding of fact so as to transform the same into a question of law. See *Ratanchand Darbarilal Vs. Commissioner of Income Tax, M.P.*, and *SREE MEENAKSHI MILLS LIMITED Vs. COMMISSIONER OF Income Tax, MADRAS.*,

5. Now, advertent to the findings, the Tribunal in its order dated January 20, 1993, annexure-IV, has categorically held "with regard to the first question we are of the view that the finding of the Tribunal is essentially a finding of fact". Noting the rival contentions, the Tribunal in its order dated July 15, 1991, annexure-III, has held as follows :

"On behalf of the assessee copies of those decisions on which reliance was placed have been filed before us in order to support the plea of the assessee. The learned Departmental representative submitted that the Assessing Officer has given a clear finding that the assessee, being an employee of the Life Insurance Corporation of India is entitled only to standard deduction and not to further deduction from incentive bonus, being for the duties of the assessee who is a regular employee of the Life Insurance Corporation of India, It is submitted that such deduction out of such bonus would be available only to agents. After considering the various aspects of the matter and after going through the decisions of the Income Tax Appellate Tribunal, copies of which have been placed on file, it is seen that the claims of a similar assessee have been allowed by the Appellate Tribunal as noted above. We are, therefore, of the opinion that the Commissioner of Income Tax (Appeals) was justified in allowing the claim of the assessee for both the assessment years."

6. It would be seen that the finding as recorded by the Tribunal is based on the material available on record, the petitioner has not placed any other material, such as, the terms governing the assessee's employment and in the absence of such material being placed on record, it is not possible to take a different view than what has been taken by the Tribunal. To enable this court to take a different view on the question whether the expenses as claimed by the assessee-

respondent to have been incurred or spent in earning the commission, were deductible, could be answered but it must also be added at the same time that the Tribunal's order cannot be said to be without any material.

7. The Bombay High Court in Commissioner of Income Tax Vs. N.C. Shah, has held as follows (at page 181) :

"It is pertinent to mention that the Tribunal had held that incentive bonus/commission received by the assessee from the Life Insurance Corporation of India was not salary income but income from business or profession. The Tribunal also held that, on such incentive bonus/commission, the assessee was entitled to deduction at the rate of 40 per cent. of the incentive bonus/commission by way of estimated expenses for earning the income for which incentive bonus was paid. It is evident that the Department has not questioned the order of the Tribunal in so far as it concluded that the incentive bonus/commission received by the assessee from the Life Insurance Corporation was income from business or profession. What it has challenged is that 40 per cent. of the bonus/commission incentive should not have been allowed as deduction. The question that is sought to be referred to this court is, in our judgment, a question of fact which this court will not like to go into unless the question raised was that the finding or the conclusion by the Tribunal was perverse or without any material. In the circumstances, rule has to be and is hereby discharged. No order as to costs."

8. In view of the foregoing discussion, this petition fails and is accordingly dismissed with no order as to costs.