

(2005) 01 P&H CK 0151
In the Punjab And Haryana At Chandigarh
Case No : IT Ref. No. 247 of 1995

Commissioner of Income Tax

APPELLANT

Vs

S.C. Wadhwa

RESPONDENT

Date of Decision : 13-01-2005

Acts Referred:

Income Tax Act, 1961 — Section 10(14), 16, 17(1), 2(24)

Citation : (2005) 198 CTR 500 : (2006) 283 ITR 384

Hon'ble Judges : Jasbir Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Rajesh Bindal, for the Appellant; Akshay Bhan, for the Respondent

Judgement

Jasbir Singh, J.—The Income Tax Appellate Tribunal, "E" Bench, New Delhi (for short, "the Tribunal"), vide its order dt. 2nd Aug., 1994, has referred the following question of law for the opinion of this Court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in allowing deduction @ 40 per cent as expenses out of incentive bonus which was disallowed by the AO in view of definition of Section 17(1)(iv) of the Act and confirmed by the Dy. CIT(A), Rohtak ?"

2. A perusal of the record shows that while working as Development Officer in services of the Life Insurance Corporation of India (for short, "the Corporation"), the assessee had received a sum of Rs. 58,090 as incentive bonus for the financial year 1985-86. In the return filed for the asst. yr. 1986-87, he claimed deduction of Rs. 29,045 as expenditure incurred for earning the incentive bonus. The AO rejected the assessee's claim for deduction. The Deputy Commissioner of Income Tax (Appeals), Rohtak [for short, "Dy. CIT(A)"], vide his order dt. 23rd March, 1989, approved the view taken by the AO that the incentive bonus paid by the Corporation was taxable as "salary". However, the Tribunal partly accepted the assessee's claim and declared that he was entitled to deduction to the extent of 40 per cent of the incentive bonus.

3. Shri Rajesh Bindal argued that the incentive bonus paid to the assessee was a part of his salary, inasmuch as, the same had not been paid to him for meeting the expenses as a special allowance, which was necessarily and exclusively incurred by him in the performance of his duties. He relied on the judgments of this Court in *B.M. Parmar Vs. Commissioner of Income Tax*, and *K.K. Kansal Vs. Commissioner of Income Tax*, and also a judgment of Madhya Pradesh High Court in *Commissioner of Income Tax Vs. A.K. Ghosh*, and argued that the assessee was not entitled to any deduction from the incentive bonus paid by the Corporation.

4. Shri Akshay Bhan supported the order of the Tribunal and argued that the assessee was rightly allowed deduction towards that part of the incentive bonus which he actually spent in business promotion activities. In support of his argument, Shri Akshay Bhan relied on the judgment of Gujarat High Court in *Commissioner of Income Tax Vs. Kiranbhai H. Shelat and Others*, .

5. We have given serious thought to the respective arguments and perused the record. Admittedly, while working as Development Officer in the Corporation, the assessee had received incentive bonus. He claimed deduction by asserting that he had incurred expenditure towards business promotion activities which enabled him to earn incentive bonus. According to him, the incentive bonus was a part of business income and not the salary. In *B.M. Parmar's* case (supra), a similar question came up for consideration. After analysing the relevant provisions of the IT Act, 1961 (for short, "the Act"), and noticing the judgment of Gujarat High Court in *Kiranbhai H. Shelat's* case (supra) on which reliance has been placed by Shri Akshay Bhan to support his submission, a Division Bench of this Court observed as under :

"The first question which needs to be decided is whether incentive bonus was assessable as profits and gains of business or profession. There is no dispute about the fact that the Development Officers are whole time employees of the LIC of India. They are employed for promoting and developing life insurance business. Their primary concern and functions are to secure more business for the LIC of India. It cannot, therefore, be said that while working in the field they are doing work in a different capacity. They go to the field through the insurance agents. Their status does not, therefore, change while working in the field for the purposes of getting more business for the LIC of India. In this situation, it cannot be said that the Development Officers are working in a different capacity while procuring more business. They might have professional expertise in the insurance business, but that would not change their status while they work in the field. They remain Development Officers in the employment of the LIC of India while working in the field also. Whatever income is received by the Development Officers from the LIC of India is by way of salary and is to be assessed under the same head. There is nothing on record to show that under the scheme of incentive bonus framed by the LIC of India in 1978, they were required to perform a duty different from the one for which they were appointed. In this

light, the extra income earned by the Development Officers cannot be said to be assessable under the head "Profits and gains of business or profession".

The Division Bench referred to the provisions of Sections. 2(24)(iii) and 10(14) of the Act and held :

"In the case of a Development Officer, the incentive bonus does not appear to be a special allowance payable to him for meeting expenses wholly, necessarily and exclusively incurred by him in the performance of his duties. In the incentive bonus scheme of 1978, there is no mention that incentive bonus is payable so as to meet the expenses incurred by the Development Officers in the performance of their duties. They have been made eligible to receive incentive bonus on the number of policies procured by them and the total amount of premium collected during a year. It is also relatable to the territory in which they are required to function for the promotion of insurance business. Thus, there is nothing to show from the scheme framed by the LIC of India in 1978, that incentive bonus was paid to the Development Officers as any special allowance or benefit granted to them to meet certain expenses."

The Division Bench then referred to various judgments and observed as under:

"On a consideration of the entire controversy, it is held that incentive bonus is assessable under the head "Salaries" and not under the head "Profits and gains of business or profession". It is further held that deduction u/s 16(i) of the Act is admissible under the head "Salaries" and no separate deduction on account of expenditure is permissible."

6. In K.K. Kansal's case (supra), this Court considered a similar question and observed:

"A bare perusal of the above shows that it has been categorically held that the Development Officers are whole-time employees of the LIC of India who are employed for promoting and developing life insurance business. It cannot, therefore, be said that while working in the field, they are doing work in a different capacity. It has also been held that whatever income is received by the Development Officers from the LIC of India is by way of salary and has to be assessed under the same head. It is also clear that this finding is not based on the interpretation of the scheme alone."

7. In view of the law laid down in the aforementioned cases, the question referred by the Tribunal is answered in the negative, i.e., against the assessee and in favour of the Revenue.