
(2003) 04 MP CK 0014

In the Madhya Pradesh High Court

Case No : IT Appeal No. 22 of 1999 & Income Tax A. No. 22 of 1999 & Income Tax A. No. 22 of 1999 28 April 2003

Commissioner of Income Tax

APPELLANT

Vs

Shikharchand Jain

RESPONDENT

Date of Decision : 28-04-2003

Acts Referred:

Income Tax Act, 1961 — Section 139, 142, 143, 154, 156

Citation : (2003) ILR (MP) 1104 : (2003) 263 ITR 221

Hon'ble Judges : Dipak Misra, J; A.K. Shrivastava, J

Bench : Full Bench

Advocate : Rohit Arya, for the Revenue and Hemant S. Modh, for the Assessee, for the Appellant;

Judgement

Dipak Misra J.

In this appeal preferred u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the revenue has called in question the pregnability of the order dated 5-1-1999, passed by the Income Tax Appellate Tribunal, Jabalpur Bench, Jabalpur (hereinafter referred to as "the Tribunal"), I.T.A. No. 234/Jab of 1996.

The facts which are essential to be adumbrated are that the assessee is a Development Officer in the Life Insurance Corporation of India. He received incentive bonus from his employer and on the said sum he claimed 40 per cent deduction in his return filed for the assessment year 1994-95. The assessing officer disallowed the deduction of the amount on the incentive bonus received by the assessee as it formed a part of salary and, hence, no such deduction was allowable. Being of this view he made prima facie adjustment and disallowed the claim while processing the return of the income u/s 143(1)(a) of the Act.

Being aggrieved by the aforesaid order the respondent-assessee preferred an appeal before the Commissioner (Appeals), Jabalpur, who allowed the appeal and

set aside the order of the assessing officer on the ground that the adjustment made could not have been done while passing the order u/s 143(1)(a) of the Act as the said adjustment by its very nature was debatable. The revenue did not accept the order passed by the first appellate authority and preferred an appeal before the Tribunal. The Tribunal concurred with the view expressed by the Commissioner (Appeals) and consequently dismissed the appeal.

It is noteworthy to mention here that this appeal was admitted on the following question of law :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is justified in affirming the order of the learned Commissioner (Appeals) holding that the issue of incentive bonus is of highly debatable nature and no such addition could be made, while the contrary decision has been taken by the High Court of Rajasthan in Hameed Jaffery Vs. Commissioner of Income Tax, Bombay, , holding that the incentive bonus is a part of salary and taxable. The jurisdictional High Court of Madhya Pradesh has also admitted a reference u/s 256 in Commissioner of Income Tax Vs. G.S. Jhamad, and is pending ?"

Mr. Rohit Arya, learned counsel for the revenue, in support of the appeal submitted that the grant of deduction on incentive bonus might have been accepted in the past and there may be divergent views expressed by the various High Courts but that does not make the issue debatable.

Mr. Hemant S. Modh, learned counsel appearing for the respondent, on the contrary, submitted that the controversy has not been put to rest and indubitably it is a contentious one and this is reflected and projected by the views expressed by various High Courts. It is urged by him, the matter would have been different had there been a judgment of the Apex Court on this count. It is also highlighted by Mr. Modh that the deduction was allowed in the earlier years and, therefore, it can be irrefragably said that the issue that emerged is in the compartment of a debatable one.

In view of the submissions put forth at the Bar, the singular question that arises for adjudication is whether the issue before the assessing officer was debatable in nature or whether he could have proceeded to make the prima facie adjustment as he has done. In this context, we think it appropriate to refer to section 143(1)(a) of the Act. The said provision reads as under

"143. (1) (a) Where a return has been made u/s 139, or in response to a notice under sub-section (1) of section 142,

(i) if any tax or interest is found due on the basis of such return, after adjustment of any tax deducted at source, any advance tax paid and any amount paid otherwise by way of tax or interest, then, without prejudice to the provisions of sub-section (2), an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued u/s 156 and all the provisions of this Act shall apply

accordingly ; and

(ii) if any refund is due on the basis of such return, it shall be granted to the assessee :

Provided that in computing the tax or interest payable by, or refundable to, the assessee, the following adjustments shall be made in the income or loss declared in the return, namely :

(i) any arithmetical errors in the return, accounts or documents accompanying it shall be rectified ;

(ii) any loss carried forward, deduction, allowance or relief, which, on the basis of the information available in such return, accounts or documents, is prima facie admissible but which is not claimed in the return, shall be allowed ;

(iii) any loss carried forward, deduction, allowance or relief claimed in the return, which, on the basis of the information available in such return, accounts or documents, is prima facie inadmissible, shall be disallowed :

Provided further that an intimation shall be sent to the assessee whether or not any adjustment has been made under the first proviso and notwithstanding that no tax or interest is due from him :

Provided also that an intimation under this clause shall not be sent after the expiry of two years from the end of the assessment year in which the income was first assessable."

On a plain reading of the aforesaid provision it is clear as noon day that if, on the basis of the return filed by the assessee any tax or interest is found out after adjustment, an intimation shall be sent to the assessee. The scope of the aforesaid provision came to be interpreted in the case of *Khatau Junkar Ltd. and another Vs. K.S. Pathania and another*, and the Division Bench after referring to the brief history of the provision and the circulars issued by the Central Board of Direct Taxes from time to time came to hold that as under (page 71) :

"This is because the scope of the powers to make prima facie adjustments u/s 143(1)(a) is somewhat coterminous with the power to rectify a mistake apparent from the record u/s 154. Therefore, the Board itself has viewed the power to make adjustments as coterminous with the power to rectify mistakes apparent from the record u/s 154.",

And again the Bench expressed the view as under (page 71) :

"The use of the phrases "prima facie admissible" in clause (ii) to the proviso; and, "prima facie" inadmissible in clause (iii) to the proviso, also lend support to this interpretation. In its literal sense, "prima facie" means on the face of it. Hence, on the face of the return and the documents and accounts accompanying it, the deduction claimed must be inadmissible. Only then, can it be disallowed under the proviso to section 143(1)(a). If any further enquiry is necessary, or if

the Income Tax Officer feels that further proof is required in connection with the claim for deduction, he will have to issue a notice under sub-section (2) of section 143."

Thus, it is manifest that when a deduction is claimed and it is some what controversial it cannot be treated to be prima facie disallowable. If the claim is made by the assessee is treated not to be free from debate and argument it is bound to be regarded as a debatable issue.

It is not disputed before us that there are divergent views of the High Courts. In this context, we may note that the High Court of Gujarat in the case of Commissioner of Income Tax Vs. Kiranbhai H. Shelat and Others, and the High Court of Jammu and Kashmir in the case of R. K. Salhotra v. ITO (2002) 125 Taxman 624 (J&K) held that the allowance under the claim of deduction on incentive bonus is allowable. Other High Courts have taken a different view. Thus, there is an expression of divergent views by the High Courts. Quite apart from the above, for earlier years the appeals were allowed.

In view of the aforesaid, by no stretch of imagination, it can be said that the issue was not a debatable one and the assessing officer could have taken recourse to the path of prima facie adjustment. Hence, we have no hesitation in holding that the order passed by the Tribunal is absolutely justified and does not warrant any interference by this court. Hence, no substantial question of law is involved.

Resultantly, the appeal, being sans merit, stands dismissed without any order as to costs.

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