(2009) 07 AHC CK 0297

In the Allahabad High Court

Commissioner of Income Tax APPELLANT

Vs

Surendra Kumar Gupta RESPONDENT

Date of Decision : 27-07-2009

Acts Referred:
Income Tax Act, 1961 — Section 10, 143, 16

Citation : (2009) 319 ITR 253

Hon'ble Judges : S.K. Gupta, J;R.K. Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The Income Tax Appellate Tribunal has referred the following question of law for opinion of this Court:

Whether the hon''ble Income Tax Appellate Tribunal was legally correct in confirming the action of Deputy Commissioner (Appeals) to allow the assessee''s claim for deduction to the extent of 40 per cent. of the amount received as incentive bonus particularly when it is the part of salary ?

2. Briefly stated the facts giving rise to the present reference are as follows:

3. The reference relates to the assessment years 1989-90 to 1991-92.

4. The respondent-assessee is a development officer with Life Insurance Corporation of India. In all the three assessment years he had received incentive bonus from Life Insurance Corporation against which he had claimed certain expenditure. The Assessing Officer was of the view that incentive bonus was part and parcel of the assessee''s income under the head "Salary" and as such he was entitled to only standard deduction u/s 16(i) of the Act. Following the decision of the hon''ble Andhra Pradesh High Court in the case of K.A. Choudary Vs. Commissioner of Income Tax and Others, the Assessing Officer rejected the assessee''s claim of deduction of expenditure against incentive bonus, in the assessments completed, vide orders u/s 143(3) of the Income Tax Act dated

March 12, 1991, for the assessment year 1989-90 and dated February 28, 1992, for the assessment years 1990-91 and 1991-92.

5. In appeal, the learned Deputy Commissioner of Income Tax (Appeals), vide orders dated December 11, 1991, and January 27, 1993, following various decisions of the Income Tax Appellate Tribunal Benches and by making a reference of a decision of the hon''ble Bombay High Court, directed the Assessing Officer to allow deduction at 40 per cent. of the receipts on account of incentive bonus in all the three years.

6. Being aggrieved by the aforesaid orders of the learned first appellate authority, the Revenue came up in appeals before the Tribunal. The Tribunal after taking due note of the decision of the hon''ble Andhra Pradesh High Court in the case of K.A. Choudary Vs. Commissioner of Income Tax and Others, as also certain decisions of the Tribunal, including a decision of the Special Bench of the Tribunal, reached a conclusion that incentive bonus received by the assessee was assessable under the head "Income from salary" but the expenditure incurred by him out of the said incentive bonus was required to be excluded u/s 10(14) of the Act. Inasmuch as the assessee was not maintaining books of account, the deduction allowed by the learned first appellate authority at 40 per cent. was considered to be reasonable. Thus, vide consolidated order dated January 25, 1994, rendered in I. T. A. Nos. 1378(Del)92 and 2028(Del)93 the Department''s appeal were dismissed.

7. We have heard Sri A. N. Mahajan learned standing counsel for the Revenue and find that this Court in Commissioner of Income Tax Vs. M.S. Bagga, has held that deduction permissible u/s 16(i) of the Act alone is available to a salaried employee like a Development Officer in Life Insurance Corporation of India and it cannot claim any other deduction.

8. Respectfully, following the aforesaid decision, we answer the question referred to us in the negative, i.e., in favour of the Revenue and against the assessee. However, there shall be no order as to costs.

