
(1996) 05 RAJ CK 0054

In the Rajasthan High Court

Case No : Income Tax Reference No. 83 of 1995

P.N. Verma

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 27-05-1996

Acts Referred:

Income Tax Act, 1961 — Section 10, 16, 17

Citation : (1996) 133 CTR 514 : (1997) 227 ITR 24

Hon'ble Judges : B.R. Arora, J;A.S. Godara, J

Bench : Division Bench

Advocate : Sandeep Bhandawat, for the Appellant;

Judgement

B.R. Arora, J.—The Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, for the assessment year 1985-86, at the instance of the assessee, u/s 256(1) of the Income Tax Act, 1961, has referred the following questions of law for the opinion of the High Court :

" (1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in treating the incentive bonus as salary paid to the Development Officer by the Life Insurance Corporation of India ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in not allowing deduction of 50 per cent, as expenditure out of incentive bonus paid to the assessee by the Life Insurance Corporation of India ?"

2. The assessee was working as the Development Officer in the office of the Life Insurance Corporation at Sri Ganganagar. During the previous year relevant to the assessment year 1985-86, the assessee, in addition to the other remunerations, received incentive bonus from the Life Insurance Corporation of India. He claimed deduction to the extent of 50 per cent, on this amount of incentive bonus received by him from the Life Insurance Corporation. The Income Tax Officer, B-Ward, Sri Ganganagar, disallowed the deduction by holding that the assessee is only entitled to the standard deduction permissible u/s 16 of

the Act. The Assessing Officer was further of the view that as per the Board's Instruction No. 1471, the deduction of 50 per cent, should not be allowed to the assessee.

3. Dissatisfied with the order passed by the Assessing Officer, the assessee preferred an appeal before the Deputy Commissioner of Income Tax (Appeals), who allowed the appeal filed by the assessee and held that the commission or incentive bonus paid to the assessee does not form part of salary. The Deputy Commissioner of Income Tax (Appeals) directed the Income Tax Officer to examine the actual expenses, if any, the books of account, etc., and in the absence of it, he will allow the deduction provided in the Board's circular in this behalf.

4. The Revenue, aggrieved with the order passed by the Deputy Commissioner of Income Tax (Appeals), preferred an appeal before the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, and the Tribunal allowed the appeal filed by the Revenue by holding that the incentive bonus has to be treated as part of "salary" and no other deduction, except the standard deduction u/s 16(i) of the Act, is permissible to the assessee. Aggrieved by the order dated January 3, 1992, passed by the Tribunal, the assessee moved an application u/s 256(1) of the Act for referring the questions of law mentioned in the application for the opinion of this court and the Tribunal, by its order dated May 31, 1993, referred the questions of law mentioned in paragraph 1 (at page 24) of this judgment for the opinion of this court.

5. A similar controversy on identical facts came up for consideration before this court in D.B. Income Tax Reference No. 8 of 1992-- Commissioner of Income Tax Vs. Shiv Raj Bhatia, decided on May 1, 1996. The controversy involved in the present case as well as in the case of Commissioner of Income Tax Vs. Shiv Raj Bhatia, was : whether the incentive bonus received by the assessee, Shiv Raj Bhatia, who was also working as the Development Officer, from the Life Insurance Corporation of India, is part of the "salary" or is it the income from business or profession and he is entitled for deduction ?

6. It has been held by this court in Commissioner of Income Tax Vs. Shiv Raj Bhatia,

" The incentive bonus is linked with the percentage of business secured in excess of certain stipulated premium income. Payment of incentive bonus is relatable to employment and is not exempted u/s 10 of the Act. It is not a payment made on personal or extra employment considerations. It is linked with the relationship of employee and employer. The Development Officer, under the scheme, gets the incentive bonus being an employee of the Life Insurance Corporation. Clause (iv) of the scheme of incentive bonus, which deals with the eligibility, states that "a Development Officer, whose cost ratio (i.e., the ratio of his annual remuneration in an appraisal year to the eligible premium in that year) did not exceed 20 per cent, in the appraisal year shall only become eligible for grant of the incentive

bonus in respect of that appraisal year in accordance with the scheme". The incentive bonus paid by the Life Insurance Corporation to the Development Officer is an emolument of the office which is paid by the Life Insurance Corporation to its employee, i.e., the Development Officer, for negotiating for enhancement of the business. The payment of incentive bonus is, therefore, due to the relationship of the employer and the employee. This relationship is a sine qua non for the grant of incentive bonus. The incentive bonus paid to the Development Officer is not a personal gift but is paid as a remuneration for his services as an employee and, therefore, it forms part of the "salary". Thus, the incentive bonus is part of the salary of the assessee and is exigible to tax and the assessee is entitled only for the standard deduction permissible u/s 16 of the Income Tax Act."

7. The two questions of law referred by the Tribunal for the opinion of ,this court, mentioned in paragraph 1 (page 24) above, are identical to those which were referred in Commissioner of Income Tax Vs. Shiv Raj Bhatia, The facts of this case are also identical with the facts of Commissioner of Income Tax Vs. Shiv Raj Bhatia, who was also a Development Officer in the Life Insurance Corporation of India. For the same reasons, the abovequoted two questions are, therefore, answered in favour of the Revenue and against the assessee in the same manner.

8. Consequently, question No. 1 is answered in the affirmative, i.e., in favour of the Revenue and against the assessee and it is held that the Tribunal was right in treating the incentive bonus as "salary" paid to the Development Officer by the Life Insurance Corporation of India. Question No. 2 is also answered in the affirmative, i.e., in favour of the Revenue and against the assessee and it is held that the Tribunal was right in not allowing deduction of 50 per cent, as expenditure out of the incentive bonus paid to the assessee by the Life Insurance Corporation of India.

9. A copy of this judgment/order may be sent to the Registrar, the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, as required u/s 260 of the Income Tax Act.