

Patna High Court - Orders

C.I.T. Bihar Patna vs Moti Lal Jain, Dev. Officer, Lic on 28 September, 2010

IN THE HIGH COURT OF JUDICATURE AT PATNA

Tax Case No.30 of 1990

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The Commissioner of Income Tax, Bihar-I, Patna...Petitioner

Versus

Motilal Jain, Development Officer, L.I.C. of India, Patna

.....Opposite Party

APPEARANCE

For the Petitioner: Mrs. Archana Sinha, Advocate &  
Mr. Harshwardhan Prasad, Advocate

For the Respondent : Mr. Ajay Kumar Rastogi, Advocate &  
Mr. Shailendra Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

3. 28/09/2010 This reference under section 256(2) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') arises from the judgment and order dated 31st May 1990 passed by the Income Tax Appellate Tribunal in R.A. No.50(Patna)/1989, arising out of Income Tax Appeal No. 267 (Pat)/1987, relating to the Assessment Year 1983-84.

The respondent-assessee, a Development Officer in the Life Insurance Corporation of India (hereinafter referred to as 'the Corporation') had, in the previous year relevant to the Assessment Year 1983-84, received incentive bonus of Rs.80,622.20 paise from the Corporation. Out of the said amount of incentive bonus, the assessee claimed deduction of 40% as expenses.

According to the assessee, the incentive bonus was an "income from profession" and was not a part of the "salary". The Assessing Officer did not accept the claim of the assessee. Order of the Assessing Officer was set aside by the Appellate Assistant Commissioner of Income tax. The Appellate Assistant Commissioner held that the amount of incentive bonus was an "income from profession". The assessee was, therefore, in consonance with the Board's circular no. 1774 dated 29th September 1987 entitled to a deduction of 40% claimed by him. The challenge to the appellate order before the Income Tax Appellate Tribunal failed. The tribunal held that the incentive bonus cannot be treated as a part of salary and that it is a professional income. The tribunal directed the Assessing Officer to allow 40% deduction from the incentive bonus.

The present Reference is made at the instance of the Revenue for resolution of the following questions of law:-

"1. Whether on the facts and in the  
circumstances of the case, the Income-tax

Appellate Tribunal was justified in holding that the incentive bonus earned by an assessee was not covered by salary and is in nature of commission earned by the Insurance Agent against which expenses to the extent of 40% were allowable in view of Board's Circular no.1774 dated 20.9.1987 communicated vide F.no.200/172/84/IT (A.I.) dated 14.10.1987?

2. Whether on the facts and in the circumstances of the case the assessee is entitled to claim 40% as expenses from incentive bonus?"

Learned Advocate Mrs Archana Sinha has appeared for the department. She has submitted that the above-referred questions are no more res integra. This court (Coram: Chandramauli Kr. Prasad, J, as he then was, and Jayanandan Singh, J.) has decided the issue in the matter of the Commissioner of Income Tax, Bihar, Patna Vs. Ramjee Prasad ( Tax Case No.13 of 1991). By the judgment and order dated 7th February 2008, this court has held as under:-

"The incentive bonus given to the assessee was not granted by the Life Insurance Corporation of India for the purposes as set out in Section 10(14) of the Act. Once it is held so the assessee cannot claim deduction at the rate of 40% taking shelter behind Section 10(14) of the Act. We are of the opinion that no provision other than Section 10(14) of the Act exists for allowing deduction towards expenditure of the nature claimed by the assessee. Incentive bonus or part thereof is not reimbursement of expenditure by the employer to qualify for deduction under Section 10(14) of the Act. We are of the opinion that expenditure under Section 10(14) of the Act can be allowed only when it is granted to meet expenses wholly and exclusively in performance of the duty and that too to the extent such expenses are actually incurred for that purpose."

Learned Advocate Mr Ajay Kumar Rastogi has appeared for the assessee. At the outset, he has challenged the maintainability of the present Reference.

He has submitted that the Government of India has taken a conscious decision under its communication dated 27th March 2000 not to file appeal before the High Court unless the tax effect exceeds Rs. 2 lakhs. The said instruction has since been modified. Under the communication dated 24th October 2005, the above-referred monetary limit of Rs. 2 lakhs has been raised to Rs. 4 lakhs. He has submitted that the aforesaid instruction would apply not only to the appeals to be filed thereafter but also to the appeals/references pending on the date. He has submitted that as in the present case the tax effect is less than the aforesaid monetary limit, the case requires to be dismissed. In support, he has relied upon the judgment of the Bombay High Court in the matter of Commissioner of Income-Tax Vs. Pithwa Engg. Works (276 ITR 519).

In the above-referred matter, the Bombay High Court relied upon the instruction dated 27th March 2000 in an Income Tax Reference filed in the year 1988. The Bombay High Court held, "The above instructions dated March 27, 2000 reflect the policy decision taken by the Board not to raise questions of law where the tax effect is less than the amount prescribed in the above circular with a

view to reduce litigations before the High Courts and the Supreme Court. The said circular is binding on the Revenue though learned counsel tried to contend that the said circular is not applicable to the old referred cases. However, he could not take his submission to a logical end.

One fails to understand how the Revenue can contend that so far as new cases are concerned, the circular issued by the Board is binding on them and in compliance with the said instructions, they do not file references if the tax effect is less than Rs. 2 lakhs. But the same approach is not adopted with respect to the old referred cases even if the tax effect is less than Rs. 2 lakhs. In our view, there is no logic behind this approach."

We are unable to agree with the opinion of the Bombay High Court. The Government of India has decided that appeals would be filed only in cases where the tax effect exceeded the revised monetary limit given thereunder, that necessarily means that those instructions would apply to the appeals/references which were yet to be filed or, in other words, the appeals/references filed after 27th March 2000. In our opinion, the High Court cannot refuse to consider and decide the appeals/references which are already filed and pending before the High Court for decision taking shelter under the above-referred instruction dated 27th March 2000 or any other instruction of similar nature.

Mr Rastogi has next submitted that the above- referred judgment in the matter of Ramjee Prasad is per incuriam the decision of the Gujarat High Court in the matter of Commissioner of Income-Tax Vs. Kiranbhai H. Shelat & Anr. (235 ITR 635). He has submitted that the Gujarat High Court has in no uncertain terms held that the Development Officers of the Corporation are entitled to deduct actual expenses incurred by them to the maximum of 30% from the amount of the incentive bonus received by them from the Corporation.

In the matter of Ramjee Prasad, identical question of law was referred to this Court. This Court followed the judgments of the Full Bench of the Karnataka High Court in the matter of Commissioner of Income-Tax Vs. M.D. Patil [1998 (220) ITR 71] and of the Madhya Pradesh High Court in the cases of Commissioner of Income-Tax Vs. A.K. Ghosh [(2003) 263 ITR 536] and of Commissioner of Income-Tax Vs. Gurudeo Singh Jaggi [(2004) 267 ITR 763]. The aforesaid High Courts have taken a consistent view that the amount of incentive bonus received by the Development Officers of the Corporation is not referable to and is not exempt under Section 10(14) of the Act, but is a 'salary' within the meaning of Section 17(1)(iv) of the Act. The only deduction admissible will be the standard deduction available under Section 16 of the Act. The appeal preferred against the above-referred judgment of the High Court of Madhya Pradesh was not entertained by the Hon'ble Supreme Court.

The Gujarat High Court also has the same view insofar as Section 10(14) of the Act is concerned. It has been held that the incentive bonus is a salary within the meaning of Section 17(1)(iv) of the Act. It further held, "the Development Officer can still demonstrate that he was required to incur the expenditure as a part of his duty to enable himself to realize the proceeds of the Incentive bonus. Thus, for working out the amount of profit in addition to salary, there would be deduction from the gross Incentive bonus, expenses properly incurred in realizing it. This deduction would be

warranted to reach the profit element cannot be denied to the assessee-employee on the ground that the statutory deductions are already provided in Section 16."

In view of the aforesaid discussion, it was decided that the Development Officer of the Corporation was entitled to deduction of the actual expenses incurred by him up to a maximum limit of 30% of the amount and that the net amount after such deduction is the salary income.

We may first note that the judgment of the Gujarat High Court is not a binding precedent. The judgment in the matter of Ramjee Prasad (supra) cannot be said to be per incuriam as submitted by Mr Rastogi. Further the reliance placed on the Board's circular no. 1774 dated 29th September 1987 was also uncalled for. The said circular no. 1774 is placed before us. It is apparent that it contains a clarification of its earlier circular no. 1546 dated 6th January 1984. It only clarifies that the earlier instruction was issued in respect of the commission earned by the insurance agents and that it did not apply to the Development Officers of the Corporation, who are full time employees of the Corporation and are in receipt of regular salary. It has been reiterated that "the payment received by the Development Officers as incentive bonus or bonus commission (or by any other name) is for the work done for the employer. It is in lieu of or in addition to salary and forms part of salary by virtue of Section 17(1)(iv) of the Act." In our opinion, the tribunal and the appellate authority below both were wrong in holding that the incentive bonus received by the Development Officer is an "income from profession" and that the assessee was entitled to 40% deduction as expenses.

In view of the above binding precedent, we answer Question nos. 1 & 2 in favour of the Revenue and against the assessee. We hold that the incentive bonus earned by the assessee was the salary within the meaning of Section 17(1)(iv) of the Act. The assessee was, therefore, not entitled to 40% deduction as expenses from the amount of incentive bonus as claimed by him.

In the present case, we are not called upon to consider whether or not the assessee was entitled to deduction of actual amount of expenses incurred by him to a maximum of 30% as the assessee has not claimed any deduction as expenses actually incurred by him to earn incentive bonus.

The reference is answered in the above terms. The parties will bear their own cost.

( R. M. Doshit, C.J.) ( Jyoti Saran, J.) AFR/-

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