

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Income-tax Reference No. 5 of 2010

Date of decision: 26.8.2010

C.I.T. Patiala

--- Appellant

Versus

R.S. Jain, Development Officer

Ludhiana

--- Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Rajesh Katoch, Advocate
for the appellant-Revenue.

AJAY KUMAR MITTAL, J.

On a direction of this Court passed in a petition moved by
the revenue, under Section 256(2) of the Income Tax Act, 1961 (for short

“the Act”), the Income-tax Appellate Tribunal Chandigarh Bench ‘B’ Chandigarh (in short “the Tribunal”) 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 Appellate Tribunal was right in law in cancelling the order passed under section 263 of Income Tax Act when the same was in consonance to the Board’s Instruction No.1774?”

The above question arose in the wake of the facts that the assessee who at the relevant time was working as Development Officer in Life Insurance Corporation filed return of income for the assessment year 1986-87 claiming certain deductions out of incentive bonus. The assessing officer allowed the claim of the assessee. The Commissioner of Income-tax (in short “the CIT”) after noticing that the assessee had claimed 50% of incentive bonus as expenses, in addition to standard deduction under Section 16(1) of the Act, afforded an opportunity of being heard to the assessee before invoking the provisions of Section 263 of the Act. The assessee submitted reply that

the provisions of Section 263 were not called for as the relations between him being a Development Officer and the Life Insurance Corporation were not that of an employer and the employee. It was submitted that there existed an agreement between the Corporation and the Field Officers/Development Officers of the said Corporation and in case their performance was not found up to the expected standard, they could be penalized in terms of the said agreement. The CIT did not accept the stand taken by the assessee and cancelled the assessment order passed by the assessing officer in exercise of power under Section 263 of the Act. It was held that there were clear instructions from the Central Board of Direct Taxes, i.e. Instructions No 1774 issued vide F. No. 200/172/84-IT (AI) dated 29.8.87/14.10.87 whereby the incentive bonus had been held to be a part of the salary.

The assessee carried the matter in appeal before the Tribunal. The Tribunal following its earlier decision rendered on 27.12.1982 in the case of Raj Kumar Sethi in Income-tax Appeal Nos. 186 and 187 and C.O. Nos. 135 and 136/Chandi/1981, accepted the appeal of the assessee and set aside the order of the CIT.

No one has appeared on behalf of the assessee before
US.

The solitary point that arises for consideration in this reference is regarding nature of the income with regard to incentive bonus which was received by the assessee-respondent, who was a Development Officer in the Life Insurance Corporation at Ludhiana. A Division Bench of this Court in B.M. Parmar, Development Officer, Life Insurance Corporation of India v. Commissioner of Income-tax, (1999) 235 ITR 679 had the occasion to consider the similar issue and had held that the incentive bonus which was being paid to the Development Officer in Life Insurance Corporation would form part of his salary. The relevant observations made by the Division Bench are as under:

“When an employee is allowed deduction under clause (i) of Section 16, he cannot claim a second deduction on the ground of having incurred certain expenditure in the performance of his duties.

The assessee has not been able to show that he was not paid any traveling allowance while going to the field

in connection with the insurance business. He cannot claim a second reimbursement from the amount of incentive bonus. He, being an employee of the Life Insurance Corporation of India, is entitled to the allowances and benefits in respect of his duties as admissible to other employees.

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

Accordingly, the Commissioner of Income-tax was justified in invoking Section 263 of the Act and the Tribunal had erred in cancelling the said order.

In view of the above, we decide the question referred to this Court in favour of the revenue and against the assessee. The Reference stands disposed of.

(AJAY KUMAR MITTAL)
JUDGE

(ADARSH KUMAR GOEL)
JUDGE

August 26, 2010
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