T.K. Ginarajan

v.

Commnr. Of Income Tax, Cochin

(Supreme Court Of India)

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA HON'BLE MR. JUSTICE KURIAN JOSEPH

Civil Appeal No. 5216 Of 2002 | 01-08-2013

Kurian Joseph, J.

1. Whether the incentive bonus paid to the Development Officers by Life Insurance Corporation (hereinafter referred to as "LIC") prior to 1-4-1989 would form part of the salary and, thus, exigible to income tax, is the issue arising for consideration in this case.

Short facts

2. Appellant, T.K. Ginarajan, Development Officer in LIC claimed deduction of 40% of the incentive bonus paid to him in the return of income tax for the various years prior to 1-4-1989 on the ground that he had incurred expenditure to the extent of 40% of the incentive bonus for canvassing business, LIC of India had requested the Central Board of Direct Taxes (hereinafter referred to as "CBDT") for a clarification on deduction explaining that the Development Officers had actually incurred some expenditure in the performance of their duty, to the tune of at least 40% of the incentive bonus paid to them. However, CBDT affirmed that the incentive bonus paid by LIC to the Development Officers formed part of their income towards salary. To quote:

"…… Such portion of the incentive bonus which is actually spent by the Development Officer for duties of office can still be exempted from tax if LIC makes the payment against the expenses incurred by the Development Officer by way of reimbursement of expenses. In that case, such reimbursement will not form a part of the 'salary' of the Development Officer and only the incentive bonus which is not certified will appear in the salary certificates. LIC has not certified that a part of the incentive bonus is against the expenses incurred by the Development Officers by way of reimbursement of expenses. If such a part is certified that part will not form part of the salary and that part of the incentive bonus which is not certified will appear in the salary certificate. Hence, no deduction is contemplated from the incentive bonus, which finds a place in the salary certificates…."

3. However, with effect from 1-4-1989, LIC itself issued a clarification to the effect that the Development Officers would be entitled to claim reimbursement to the extent of 30% of the incentive bonus granted to them. Thus, the dispute is confined only to the period prior to 1-4-1989

and, thereafter, the Development Officers are entitled to the reimbursement of actual expenses incurred by them, to the extent of 30%. In other words, after 1-4-1989, only that part of the incentive bonus after reimbursing the expenses to the extent of 30% will appear in the salary certificate. What is the fate of the incentive bonus to the Development Officers in LIC prior to 1-4-1989 for the purpose of income tax is the question to be considered in this case.

4. Income towards salary is explained under Section 15 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). Permissible deductions are provided under Section 16. The inclusive definition of "salary" "perquisite" and "profits" in lieu of salary is given under Section 17 of the Act.

5. It is now trite law that the Income Tax Act, 1961 is a complete code as far as tax on income is concerned. "Income" is defined under Section 2(24) of the Act and the computation of income is provided under Chapter III of the Act (starting with Section 10). In the case of salaried persons, the only permissible deduction is under Section 16 of the Act. Section 17 has clearly provided for the details of income by way of salary. There is no serious dispute in this case that the incentive bonus paid to the employee by the employer is nothing but salary and there cannot be any dispute either since such payments are covered by the exhaustive definition of "Salary" under Section 17(1). For the purpose of ready reference, we shall extract the same:

"17. 'Salary', 'perquisite' and 'profits in lieu of salary' defined. – For the purposes of Section 15 and 16 and of this section –

(1) 'Salary' includes-

(i) wages;

(ii) any annuity or pension;

(iii) any gratuity;

(iv) any fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages;

(v) any advance of salary;

(v-a) any payment received by an employee in respect of any period of leave not availed of by him;

(vi) the annual accretion to the balance at the credit of an employee participating in a recognized provident fund, to the extent to which it is chargeable to tax under Rule 6 of Part A of the Fourth Schedule;

(vii) the aggregate of all sums that are comprised in the transferred balance as referred to in sub-rule (2) of Rule 11 of Part A of the Fourth Schedule of an employee participating in a recognized provident fund, to the extent to which it is chargeable to tax under sub-rule (4) thereof; and

(viii) the contribution made by the Central Government or any other employer in the previous year, to the account of an employee under a pension scheme referred to in Section 80-CCD."

6. In the case of the appellant, the claim for exclusion of 40% of the incentive bonus towards the expenditure was declined by the Assistant Income Tax officer. The Commissioner of Income Tax (Appeals) dismissed the appeal. However, the Income Tax Appellate Tribunal held in favour of the assesee. But the High Court was in favour (CIR v. T.K. Ginarajan, (2002) 253 ITR 463 (Ker) of the Revenue and, thus, the civil appeal.

7. The Full Bench of the High Court of Karnataka in CIT v. M.D. Patil (1998) 229 ITR 71 (Kar) took the view that incentive bonus earned by the Development Officers of LIC of India is nothing but salary and no deduction over and above the standard deduction provided under Section 16 is permissible under the Act. Accordingly, the claim of expenditure or net income theory put forward by the Development Officers were rejected by the High Court of Karnataka. Similar is the view taken by the High Court of Andhra Pradesh in K.A. Choudhary v. CIT ((1990) 183 ITR 29 (AP), the Madras High Court in CIT v. E.A. Rajendran ((1999) 235 ITR 514 (Mad) and in CIT v. P. Arangasamy ((2000) 242 ITR 563 (Mad), the Orissa High Court in CIT v. Anil Singh ((1995) 215 ITR 224 (Ori), the High Court of Bombay in CIT v. Gopal Krishna Suri ((2001) 248 ITR 818 (Bom) and the Calcutta High Court in CIT v. Ramlal Agarwala ((2001) 250 ITR 828 (Cal), all in favour of the revenue. However, the High Court of Gujarat in CIT v. Kiranbhai H. Shelat ((1999) 235 ITR 635 (Guj) has taken a contrary view placing heavy reliance on section 10(14) of the Act as it stood prior to 1-4-1989.

8. Section 10(14) of the Act prior to 1-4-1989 reads as follows:

"10. Incomes not included in total income. – In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included –

* * *

(14) any special allowance or benefit, not being in the nature of an entertainment allowance or other perquisite within the meaning of clause (2) of Section 17, specifically granted to meet

expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit, to the extent to which such expenses are actually incurred for that purpose."

(emphasis supplied)

9. "Perquisite" is excluded from the purview of Section 10(14). "Perquisite" is defined under Section 17(2) of the Act. Explanation 3 under Section 17(2) clearly provides that:

"Explanation 3. – …"Salary' includes the pay, allowances, bonus or commission payable monthly or otherwise or any monetary payment, by whatever name called, from one or more employers, as the case may be…."

10. That apart, what is excluded under Section 10(14) as it stood prior to 1-4-1989 is the expenses incurred in the performance of the duty. It is for the employer to certify the actual expenses incurred in the performance of duty and in which case, as clarified by CBDT, to that extent, the same shall not be shown as part of salary. On facts, as clearly noted in the judgment (CIT v. T.K. Ginarajan, (2002) 253 ITR 463 (Ker) of the High Court of Kerala, there is no claim by the employee either for reimbursement or exclusion of the actual expenditure incurred in performance of the duty. These two distinctions unfortunately missed the notice of the High Court of Gujarat. The Court in fact was swayed by the letter written by LIC of India to CBDT for clarification that, to the extent of 40% of the incentive bonus could be exempted as expenditure incurred for the development of business which made them eligible for the incentive bonus. The High Court of Gujarat failed to take note of the reply by CBDT that it was for LIC of India to reimburse the actual expenditure involved in the performance of the duty by the Development Officers and to that extent the same was not to be shown as salary.

11. Compartmentalisation of income under various heads and computation of the taxable portion strictly in accordance with the formula of deductions, rebates and allowances are to be done only as per the scheme provided under the Act. As held by this Court in Karamchari Union v. Union of India ((2000) 3 SCC 335), the Income Tax Act, 1961 is a self-contained code and taxability of the receipt of any amount or allowance has to be determined on the basis of the meaning given to the words or phrases given in the Act. Thus, we do not agree with the view taken by the High Court of Gujarat in Kiranbhai case ((CIT v. Kiranbhai H. Shelat, (1999) 235 ITR 635 (Guj). The same does not lay down the correct principle of law.

12. Though the learned counsel for the appellant made a persuasive attempt to place reliance on the decision of this Court in State of W.B. v. Texmaco Ltd. ((1999) 1 SCC 198 : 1999 SCC (L&S) 285), we are afraid the same is of no assistance to the appellant. The incentive bonus referred to in the said decision is the special scheme of the company. The question considered in the said decision was as to whether the said bonus would form part of salary as defined under the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979. This Court held, placing reliance on the

definition of “Salary” in the said Act that only in case there was remuneration on a regular basis, the same was exigible to tax under the said Act. On facts, it was found that there was no regular payment of incentive bonus. That is not the factual or legal position in the case of the appellant under the Act and, therefore, the said decision is not relevant at all for the purpose of this case.

13. The appellant being a salaried person, the incentive bonus received by him prior to 1-4-1989 has to be treated as salary and he is entitled only for the permissible deductions under Section 16 of the Act. The expenses incurred in the performance of duty as Development Officer for generating the business so as to make him eligible for the incentive bonus is not a permissible deduction and, hence, the same is exigible to tax. There is no merit in the appeal. The appeal is accordingly dismissed No costs.