

T.K. GINARAJAN

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v.

THE COMMISSIONER OF INCOME TAX, COCHIN,
KERALA

(Civil Appeal No. 5216 of 2002)

AUGUST 1, 2013.

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[SUDHANSU JYOTI MUKHOPADHAYA AND KURIAN
JOSEPH, JJ.]

Income Tax Act, 1961:

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*ss.2(24), 15, 16 and 17 – “Income”, “salary”, “perquisite”
– Connotation of – Deduction of 40% of the incentive bonus
paid to Development Field Officer of LIC prior to 1.4.1989
claimed as expenditure incurred for canvassing business –
Held: Incentive bonus has to be treated as salary, subject to
permissible deductions u/s 16 – 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, therefore, the same
is exigible to tax.*

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The appellant, a Field Officer in Life Insurance Corporation of India, claimed in the income tax return deduction of 40% of the incentive bonus paid to him 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. His claim was declined by the Assistant Income Tax Officer and the Commissioner of Income-Tax (appeals). The Tribunal held against the Revenue, but the High Court held in favour of Revenue.

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In the instant appeal, the question for consideration before the Court was: whether the incentive bonus paid to the Development Officers by the Life Insurance

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- A Corporation prior to 01.04.1989 would form part of the salary and, thus, exigible to income tax.

Dismissing the appeal, the Court

- B HELD: 1.1. The incentive bonus paid to the employee by the employer is nothing but salary since such payments are covered by the exhaustive definition of 'salary' u/s 17(1) of the Incoem Tax Act, 1961. The inclusive definition of 'salary', 'perquisite' and 'profits' in lieu of salary is given u/s 17 of the Act. It is now trite law C that the Income-Tax Act is a complete code as far as tax on income is concerned. 'Income' is defined u/s 2(24) of the Act and the computation of income is provided under Chapter-III of the Act (starting with s.10). In the case of salaried persons, the only permissible deduction is u/s D 16 of the Act. [para 4] [818-A-D]

- Commissioner of Income-Tax vs. M.D. Patil (1998) 229 ITR 71 (Karnataka); K.A. Choudary vs. Commissioner of Income-Tax and Others (1990) 183 ITR 29 (Andhra Pradesh); Commissioner of Income-Tax vs. E. A. Rajendran (1999) 235 ITR 514 (Madras); Commissioner of Income-Tax vs. P. Arangasamy and Others (2000) 242 ITR 563 (Madras); Commissioner of Income-Tax vs. Sri Anil Singh (1995) 215 ITR 224 (Orissa); Commissioner of Income-Tax vs. Gopal Krishna Suri (2001) 248 ITR 819 (Bombay); Commissioner of Income-Tax vs. Ramlal Agarwala (2001) 250 ITR 828 - approved.*

- State of West Bengal and Others vs. Texmaco Limited (1999) 1 SCC 198 distinguished.*

- G 1.2. What is excluded u/s 10(14) as it stood prior to 01.04.1989 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 H which case, as clarified by the CBDT, to that extent, the

same shall not be shown as part of salary. There is no claim by the employee either for reimbursement or exclusion of the actual expenditure incurred in performance of the duty. Compartmentalization 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. *Kiranbhai's* case decided by the High Court of Gujarat does not lay down the correct principle of law. [para 8-9] [821-B-D, F-G, H; 822-A]

Karamchari Union, Agra vs. Union of India and Others 2000 (2) SCR 33 = (2000) 3 SCC 335 – relied on.

Commissioner of Income-Tax vs. Kiranbhai H. Shelat and Another (1999) 235 ITR 635 - disapproved.

1.3. The appellant being a salaried person, the incentive bonus received by him prior to 01.04.1989 has to be treated as salary and he is entitled only for the permissible deductions u/s 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, therefore, the same is exigible to tax. [para 11] [822-E-G]

Case Law Reference:

(1998) 229 ITR 71 (Karnataka)	approved	para 6
(1990) 183 ITR 29 (Andhra Pradesh)	approved	para 6
(1999) 235 ITR 514 (Madras)	approved	para 6
(2000) 242 ITR 563 (Madras)	approved	para 6
(1995) 215 ITR 224	approved	para 6
(Orissa) (2001) 248 ITR 819	approved	para 6

- A (Bombay) (2001)250 ITR 828 approved para 6
(1999) 235 ITR 635 disapproved para 6
2000 (2) SCR 33 relied on para 9
B (1999) 1 SCC 198 distinguished para 10

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5216 of 2002.

- C From the Judgment and Order dated 02.11.2001 of the High Court of Kerala in ITA Nos. 8, 20, 21, 22 of 2000 and 31, 42 & 49 of 2001.

Meha Aggarwal, Varun Tandon, Wadud Aman, Subramonium Prasad for the Appellant.

- D Amarjit Singh Chandhiok, ASG, Arijit Prasad, Ritesh Kumar, S.A. Haseeb, Shweta Gupta, Honey Kumari, Mallika Ahluwalia (for B.V. Balaram Das) for the Respondent.

The Judgment of the Court was delivered by

- E **KURIAN, J.** 1. Whether the incentive bonus paid to the Development Officers by the Life Insurance Corporation (hereinafter referred to as 'LIC') prior to 01.04.1989 would form part of the salary and, thus, exigible to income tax, is the issue arising for consideration in this case.

F **SHORT FACTS**

- G 2. Appellant - T.K. Ginarajan, Development Officer in the LIC claimed deduction of 40% of the incentive bonus paid to him in the Return of Income-Tax for the various years prior to 01.04.1989 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

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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, the CBDT affirmed that the incentive bonus paid by the LIC to the Development Officers formed part of their income towards salary. To quote: A

"... 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 the 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 will appear in their 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 and 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. ..." B C D E

3. However, with effect from 01.04.1989, the 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 01.04.1989 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 01.04.1989, 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 01.04.1989 for the purpose of income-tax is the question to be considered in this case. F G

4. Income towards salary is explained under Section 15 H

A 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. It is now trite law that the Income-Tax Act, 1961 is a complete code as far as tax
 B 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
 C 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
 D purpose of ready reference, we shall extract the same:

""Salary", "perquisite" and "profits in lieu of salary" defined.

E 17. For the purposes of sections 15 and 16 and of this section,-

(1) "salary" includes -

- (i) wages;
- F (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;
- G (v) any advance of salary;
- (vi) any payment received by an employee in respect of any period of leave not availed of by him;
- H (vi) the annual accretion to the balance at the credit

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of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under rule 6 of Part A of the Fourth Schedule; A

(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 recognised provident fund, to the extent to which it is chargeable to tax under sub-rule (4) thereof; and B C

(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 80CCD;" D

5. 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 assessee. But the High Court was in favour of the Revenue and, thus, the Civil Appeal. E

6. The Full Bench of the High Court of Karnataka in *Commissioner of Income-Tax vs. M.D. Patil*¹ took the view that incentive bonus earned by the Development Officers of the 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 was rejected by the High Court of Karnataka. Similar is the view taken by the High Court of Andhra Pradesh in *K. A. Choudary vs. Commissioner of Income-Tax and Others*², the Madras F G

1. (1998) 229 ITR 71 (Karnataka)

2. (1990) 183 ITR 29 (Andhra Pradesh) H

- A High Court in *Commissioner of Income-Tax vs. E.A. Rajendran*³ and in *Commissioner of Income-Tax vs. P. Arangasamy and Others*⁴, the Orissa High Court in the decision in *Commissioner of Income-Tax vs. Sri Anil Singh*⁵, the High Court of Bombay in *Commissioner of Income-Tax vs. Gopal Krishna Suri*⁶ and the Calcutta High Court in *Commissioner of Income-Tax vs. Ramlal Agarwala*⁷, all in favour of the Revenue. However, the High Court of Gujarat in *Commissioner of Income-Tax vs. Kiranbhai H. Shelat and Another*⁸ has taken a contrary view placing heavy reliance on Section 10(14) of the Act as it stood prior to 01.04.1989.
- C Section 10(14) of the Act prior to 01.04.1989 reads as follows:-

"10. 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-

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(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."

- F 7. "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:

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- G 3. (1999) 235 ITR 514 (Madras).
 4. (2000) 242 ITR 563 (Madras).
 5. (1995) 215 ITR 224 (Orissa).
 6. (2001) 248 ITR 819 (Bombay).
 7. (2001) 250 ITR 828.
- H 8. (1999) 235 ITR 635.

""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,"

8. That apart, what is excluded under Section 10(14) as it stood prior to 01.04.1989 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 the CBDT, to that extent, the same shall not be shown as part of salary. On facts, as clearly noted in the Judgment 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 the LIC of India to the 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 the CBDT that it was for the 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.

9. Compartmentalization 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, Agra vs. Union of India and Others*⁹, 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's* case

9. (2000) 3 SCC 335.

A (supra). The same does not lay down the correct principle of law.

B 10. Though learned counsel for the appellant made a persuasive attempt to place reliance on the decision of this Court in *State of West Bengal and Others vs. Texmaco Limited*¹⁰, 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.

E 11. The appellant being a salaried person, the incentive bonus received by him prior to 01.04.1989 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.

G R.P. Appeal dismissed.

10. (1999) 1 SCC 198.