

Cit Vs. Sanjeev Mehrotra

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Court : Madhya Pradesh

Decided On : Apr-28-2003

Reported in : (2003)184CTR(MP)592

Appeal No. : IT Appeal No. 135 of 1999 A.Y. 1992-93 28 April 2003

Appellant : Cit

Respondent : Sanjeev Mehrotra

Advocate for Pet/Ap. : Rohit Arya, *for the Revenue* Sumit Nema, *for the Assessee*

Judgement :

ORDER

Dipak Misra, J.

In this appeal preferred under section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act) the revenue has called in question the pregnability of the order dated 10-8-1999, passed by the Tribunal, Jabalpur Bench, Jabalpur (hereinafter referred to as the Tribunal) in ITA/116/Jab/98.

2. The facts which are essential to the adumbrated are that the assessee is Development Officer in the LIC of India. and he received incentive bonus from his employer and on the said sum he claimed 40 per cent deduction in his return filed

for the assessment year 1992-93. The assessing officer disallowed the deduction of the amount on the incentive bonus received by the assessee as it formed a part of salary and hence, no such deduction was allowable. Being of this view he made prima facie adjustment and disallowed the claim while processing the return of the income under section 143(1)(a) of the Act.

3. Being aggrieved by the aforesaid order the respondent-assessee preferred an appeal before the Commissioner (Appeals) Jabalpur, who allowed the appeal and set aside the order of the assessing officer on the ground that the adjustment made could not have been done while passing the order under section 143(1)(a) of the Act as the said adjustment by its very nature was debatable. The revenue did not accept the order passed by the first appellate authority and preferred an appeal before the Tribunal. The Tribunal recorded its findings in para 5 and rejected the appeal. It reads as under :

'We have carefully gone through the orders of the authorities below. Admittedly with the return of income the assessee filed income and expenditure account but claimed only 25 per cent by way of deduction out of incentive bonus. The assessing officer in the intimation under section 143(1)(a) made the adjustment and against which an application under section 154 was filed which was rejected by the assessing officer. On appeal, the Commissioner (Appeals) directed the assessing officer to allow the appellant rebate of 25 per cent as claimed by him on the incentive bonus payment. The issue regarding deduction of expenditure out of incentive bonus received by LIC Development Officer is highly debatable issue on which there can reasonably be more than one opinion. Thus, it would not fall within the purview of section 143(1)(a) as well as mistake apparent from record within the meaning of section 154. We, therefore, hereby hold that assessing officer was not justified in making prima facie adjustment and Commissioner (Appeals) is fully justified in directing the assessing officer to allow the deduction as claimed.'

4. It is noteworthy to mention here that this appeal was admitted on the following question of law :

'Whether, on the facts and in the circumstances of the case, the learned Tribunal was legally justified in holding that the assessee is entitled for deduction as

claimed by him in respect of incentive bonus received by him as expenditure incurred for earning incentive bonus ?'

5. Mr. Rohit Arya, learned counsel for the revenue in support of the appeal submitted that grant of deduction on incentive bonus might have been accepted in the past and there may be divergent views expressed by various High Courts but that does not make the issue debatable.

6. Mr. Sumit Nema, learned counsel appearing for the respondent, on the contrary, submitted that the controversy has not been put to rest and indubitably it is a contentious one and this is reflected and projected by the views expressed by various High Courts. It is urged by him, the matter would have been different had there been a judgment of the Apex Court on this count. It is also highlighted by Mr. Nema that deduction was allowed in the earlier years and, therefore, it can be irrefragably said that the issue that emerged is in the compartment of a debatable one.

7. In view of the submissions put forth at the Bar, the singular question that arises for adjudication is whether the issue before the assessing officer was debatable in nature or whether he could have proceeded to make the prima facie adjustment as he has done. In this context we think it appropriate to refer to section 143(1)(a) of the Act. The said provision reads as under :

'143(1)(a). Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142;

(i) if any tax or interest is found due on the basis of such return, after adjustment of any tax deducted at source, any advance tax paid and any amount paid otherwise by way of tax or interest, then, without prejudice to the provisions of sub-section (2), an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under section 156 and all the provisions of this Act shall apply accordingly; and

(ii) if any refund is due on the basis of such return, it shall be granted to the assessee :

Provided that in computing the tax or interest payable by, or refundable to the assessee, the following adjustments shall be made in the income or loss declared in the return, namely :

(i) any arithmetical errors in the return, accounts or documents accompanying it shall be rectified;

(ii) any loss carried forward, deduction, allowance or relief, which on the basis of the information available in such return, accounts or documents, is prima facie admissible but which is not claimed in the return, shall be allowed.

(iii) any loss carried forward, deduction, allowance or relief claimed in the return, which, on the basis of the information available in such return, accounts or documents, is prima facie inadmissible, shall be disallowed :

Provided further that an intimation shall be sent to the assessee whether or not any adjustment has been made under the first proviso and notwithstanding that no tax or interest is due from him :

Provided also that an intimation under this clause shall not be sent after the expiry of two years from the end of the assessment year in which the income was first assessable.'

On a plain reading of the aforesaid provision it is clear as noon day that if, on the basis of the return filed by the assessee any tax or interest found out after adjustment, an intimation shall be sent to the assessee. The scope of the aforesaid provision came to be interpreted in the case of *Khatau Junkar Ltd. & Anr. v. K. S. Pathania, Dy. CIT & Anr.* : [1992]196ITR55(Bom) and the Division Bench after referring to the brief history of the provision and circulars issued by the Central Board of Direct Taxes from time to time came to hold that as under:

'..... This is because the scope of the powers to make prima facie adjustments under section 143(1)(a) is somewhat coterminous with the power to rectify a mistake apparent from the record under section 154. Therefore, the Board itself has viewed the power to make adjustments as conterminous with the power to rectify mistakes apparent from the record under section 154.

And again the Bench expressed the view as under :

'The use of the phrases 'prima facie admissible in clause (ii) to the proviso also lend support to this interpretation. In its literal sense, 'prima facie' means on the face of it. Hence, on the face of the return and the documents and accounts accompanying it, the deduction claimed must be inadmissible. Only then, can it be disallowed under the proviso to section 143(1)(a). If any further enquiry is necessary, or if the Income Tax Officer feels that further proof is required in connection with the claim for deduction, he will have to issue a notice under sub-section (2) of section 143.'

Thus, it is manifest that when a deduction is claimed and it is somewhat controversial it cannot be treated to be prima facie disallowable. If the claim made by the assessee is treated not to be free from debate and argument it is bound to be regarded as a debatable issue.

8. It is not disputed before us that there are divergent views of the High Courts. In this context we may note that the High Court of Gujarat in the case of *Chimanbhai H. Patel v. CIT* (1998) 99 Taxman 63 (Guj) and the High Court of J & K in the case of *R.K. Salhotra v. ITO* (2002) 125 Taxman 624 (J & K) held that the allowance under claim of deduction on incentive bonus is allowable. Other High Courts have taken a different view. Thus, there is expression of divergent views by the High Courts. Quite apart from the above, in earlier years the appeals were allowed.

9. In view of the aforesaid, by no stretch of imagination it can be said that the issue was not a debatable one and the assessing officer could have taken recourse to the path of prima facie adjustment. Hence, we have no hesitation in holding that the order passed by the Tribunal is absolutely justified and does not warrant any interference by this court. Hence, no substantial question of law is involved.

10. Resultantly, the appeal, being sans merit, stands dismissed without any order as to costs.