

Franco John and ors. Vs. Union of India (Uoi) and ors.

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Court : Kerala

Decided On : Apr-08-2003

Reported in : (2004)186CTR(Ker)760; [2004]269ITR441(Ker)

Judge : C.N. Ramachandran Nair, J.

Acts : [Income Tax Act, 1961](#) - Sections 10(14), 119 and 197; Income Tax Rules, 1962 - Rule 2BB(1)

Appeal No. : OP Nos. 7547 of 1990, 7153 of 2000 and 33745 of 2001

Appellant : Franco John and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : P.K.R. Menon and; E. Subramani, Advs.

Advocate for Pet/Ap. : Johnson Manayani,; R. Ranjini,; V. Ramachandran,;

Judgement :

C.N. Ramachandran Nair, J.

1. All these Original Petitions are filed by associations representing the LIC Development Officers challenging the periodical circulars issued by the Executive Director (Marketing) of the LIC of India providing guidelines for deduction of income-tax at source on 'additional conveyance allowance' paid to the LIC

Development Officers. OP No. 7547 of 1990 was filed in the year 1990 challenging Ext. P1 circular, dt. 3rd March, 1987, produced in that OP. Pending this OP, the very same petitioner filed OP No. 33745 of 2001 challenging latter circular, produced as Ext. P2 in that OP, which was issued in modification of the earlier circular. OP No. 7153 of 2000 is filed by another organisation of LIC Development Officers challenging the same circulars and for the same relief. I have heard counsel for the petitioners and standing counsel for the IT Department and counsel for the LIC.

2. Petitioners' contention is that additional conveyance allowance paid to them qualifies for exemption under Section 10(14) of the IT Act, and, therefore, the direction of the Executive Director of LIC to deduct income-tax in accordance with the norms prescribed by the impugned circulars is unauthorised and without jurisdiction. LIC of India, on the other hand, contended that as employer they are bound to deduct income-tax at source from the payment of salary in terms of Section 192 of the IT Act. They have further contended that salary, perquisites, etc. under the IT Act have definite meanings and accordingly the LIC of India took guidelines from the CBDT for the purpose of deduction of income-tax. So far as conveyance allowance and additional conveyance allowance, etc. are concerned, the impugned circulars are issued by the Executive Director of the LIC after taking instructions from the CBDT. Standing counsel for the IT Department, on the other hand, contended that additional conveyance allowance forms part of salary and deductions have to be made towards income-tax at source after providing for exemption in terms of Section 10(14) of the IT Act r/w Rule 2BB of the IT Rules, prescribed thereunder.

3. I have gone through the circulars or instructions issued by the Executive Director of LIC providing guidelines for deduction of income-tax at source in a limited way mainly based on performance of the officers concerned. Even though LIC has stated that they have taken instructions from the CBDT, no circular/proceeding is seen issued by the CBDT either under Section 119 or under any other provisions of the Act. I do not think the exemptions and deductions contemplated in the circular issued by the Executive Director, admittedly based on the volume of business transacted by the Development Officers, are consistent

with the provisions of the IT Act and Rules. The relevant section, namely, Section 10(14) and Rule 2BB are extracted hereunder for easy reference:

'14. (i) any such special allowance or benefit, not being in the nature of a 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, as may be prescribed, to the extent to which such expenses are actually incurred for that purpose;

(ii) any such allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides, or to compensate him for the increased cost of living, as may be prescribed and to the extent as may be prescribed :

Provided that nothing in Sub-clause (ii) shall apply to any allowance in the nature of personal allowance granted to the assessee to remunerate or compensate him for performing duties of a special nature relating to his office or employment unless such allowance is related to the place of his posting or residence;

'2BB. Prescribed allowances for the purposes of Clause (14) of Section 10.--(1) For the purposes of Sub-clause (i) of Clause (14) of Section 10, prescribed allowances, by whatever name called, shall be the following, namely :

(a) any allowance granted to meet the cost of travel on tour or on transfer;

(b) any allowance, whether, granted on tour or for the period of journey in connection with transfer, to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty;

(c) any allowance granted to meet the expenditure incurred or conveyance in performance of duties of an office or employment of profit;

Provided that free conveyance is not provided by the employer;

(d) any allowance granted to meet the expenditure incurred on a helper where such helper is engaged for the performance of the duties of an office or

employment of profit;

(e) any allowance granted for encouraging the academic, research and training pursuits in educational and research institutions;

(f) any allowance granted to meet the expenditure incurred on the purchase or maintenance of uniform for wear during the performance of the duties of an office or employment of profit.'

The exemption provided under Section 10(14) is not limited to additional conveyance allowance or conveyance allowance. It provides for exemption for special allowances other than perquisites defined under Section 17(2) of the IT Act, specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit. Of course, the exemptions are subject to a ceiling that has been prescribed under the Rules. Rule 2BB(1)(c), insofar as conveyance allowance is concerned, provides for exemption of only allowance granted to meet the expenditure incurred on conveyance in performance of duties of an office or employment of profit. There is a further limitation that no exemption is available to an employee in a case where the employer is providing free conveyance to the employee. On a reading of the section the rule prescribed thereunder, namely, Rule 2BB(1)(c) is absolutely consistent with the section. The exemption contemplated is only in respect of expenditure for conveyance incurred by the employee and reimbursement by the employer. The position, therefore, is that actual expenditure incurred by the employee and reimbursed by the employer on being satisfied that the expenditure is incurred towards conveyance in the performance of duty of office shall not attract income-tax. It is conceded that LIC Development Officers are entitled to certain conveyance allowance and besides this, they are also entitled to additional conveyance allowance. The claim of exemption raised in the OPs does not pertain to conveyance allowance paid to the Development Officers, but is limited to the eligibility for exemption of 'additional conveyance allowance'. Exemption is available to the additional conveyance allowance in terms of Section 10(14) r/w Rule 2BB(1)(c) to the extent of actual expenditure for conveyance incurred by each Development Officer and reimbursement to him by the employer, namely,

LIC of India. The issue arose in Madras where the LIC's return claiming exemption from the deduction of income-tax on additional conveyance allowance was rejected by the AO and in turn by the CIT. When this was challenged before the Madras High Court, the Madras High Court in the decision in Life Insurance Corporation of India v. CIT : [2000]245ITR224(Mad) referred the matter back to the Department for deciding the issue with reference to Rule 2BB of the IT Rules as the same was not considered by the Department in the proceedings impugned in Court. The finding of the learned Single Judge in that case was that the Department went by the earlier decision of the Madras High Court in CIT v. E.A. Rajendran : [1999]235ITR514(Mad) , wherein the rule was not considered at all and decision in that case was in the context of incentive bonus. It is seen that the issue directly arose in the decision of the Bombay High Court in Life Insurance Corporation Class-I Officers (Bombay) Association v. Life Insurance Corporation of India and Anr. : [1998]229ITR510(Bom) , wherein the Bombay High Court after considering Rule 2BB of the IT Rules held that in order to claim exemption, the conveyance allowance must be necessarily expended for meeting expenses wholly and necessarily incurred or to be incurred in the performance of duties of an office. In order to claim exemption, it was held, the assessee must satisfy two tests, namely, that they are expenses wholly and necessarily incurred in the performance of the duties of the office, and, secondly, the expenses incurred by the assessee were for the discharge of his duties under the conditions of service with the employer. I do not think Section 10(14) r/w Rule 2(BB)(1)(c) is capable of different meaning than what is assigned to it by the Bombay High Court in the said decision. However, I do not think that this Court should examine the correctness or propriety of the two impugned circulars issued by the Executive Director of LIC who is stated to have issued the same after consulting tax experts and CBDT. These circulars or guidelines are not statutory and have no force of law. It only serves as guidelines from management to subordinate officers; particularly to salary-disbursing department and can neither bind the IT Department nor the LIC Development Officers. The administration of IT Act is by statutory authorities, who have been given definite powers. While CBDT has jurisdiction under Section 119 to issue circulars for the administration of statute, it cannot authorise employees to issue circulars on behalf of CBDT. Circulars issued by the Executive Director of

LIC do not have force of circulars issued by the CBDT under Section 119 of the Act. Of course, since the LIC has operation all over India, it is upto them to approach CBDT who are free to issue any circular which will have binding force on the subordinate officers. So far as deduction of income-tax at source is concerned, especially pertaining to an item of income, which is claimed as exempt by the employee, I find Section 197 grants specific power to the AO on an application by the assessee to issue certificate authorising payment without deduction of tax or on deduction of tax at rates below the prescribed limit, if the AO is satisfied that the assessee is eligible for exemption full or partial.' Therefore, the normal procedure under the Act is for each and every LIC Development Officer to approach the AO with an application under Section 197 and demonstrate that the additional conveyance allowance is not exempt fully or partly and on being satisfied the AO has to necessarily issue the certificate. On the other hand, if deduction is made, it is for the assessee to claim exemption in the assessment by filing returns and claim refund of tax wherein also the AO will consider the eligibility for exemption in the assessment, and if assessee is aggrieved, he is free to file appeal before the appellate authority and get the matter settled. It is, therefore, either for the LIC to take up the matter before the CBDT for appropriate circulars under Section 119 of the IT Act and in that event CBDT will issue circular, or otherwise, since all the LIC Development Officers are assesseees they are free to make individual applications before the AO concerned in terms of Section 197 and obtain certificate which will be followed by LIC in regard to tax deduction at source. I do not think there is any need for this Court to go into the correctness of the two impugned circulars issued by the Executive Director of the LIC of India on deduction of income-tax, which, as already held, serves only as guidelines to subordinate officers. It is for the IT Department to scrutinise the correctness of TDS made either while considering the LIC's TDS returns or while assessing the income of LIC Development Officers. Going by the interpretation placed on Section 10(14) and Rule 2BB(1)(c) by this Court above, exemption on additional conveyance allowance has to be considered with reference to proved facts of each assessee (LIC Development Officer) and, therefore, the issue cannot be decided by this Court in OPs filed by representative bodies.

OPs are disposed of with the above observations.

