

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ।
IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT
[Conducted through "E" Court at Ahmedabad]
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 726/RJT/2014

निर्धारण वर्ष/Assessment Years: 2010-11

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| Shri Ranmalbhai R. Rajatia LIC of India "Harikrupa" Station Road Keshod. | Vs | The ITO, Ward-2(2) Jungadh. |
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|---------------|---------------------------|
| Assessee by : | Written Submissions |
| Revenue by : | Shri Praveen Verma, Sr.DR |

सुनवाई की तारीख/Date of Hearing : 26/10/2018

घोषणा की तारीख /Date of Pronouncement : 01/11/2018

ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER : Present appeal is directed at the instance of the assessee against order Id.CIT(A)-IV, Rajkot dated 8.10.2014 passed for the assessment year 2010-11.

2. Assessee has raised a number of grounds in its appeal memo, however, only issue involved in all these grounds is that the Id.CIT(A) has erred in confirming addition of Rs.3,30,893/- made by the AO with the help of section 10(14) of the Income Tax Act, 1961.

3. Brief facts in this regard are that the assessee is a Development Officer with Life Insurance Corporation of India Ltd. ("LIC" for short). He filed return of income on 25.5.2010 declaring total income at

Rs.13,81,040/-. This income includes an amount of Rs.11,02,977/- representing incentive bonus received from LIC. Return of the assessee was selected for scrutiny assessment and notices under section 143(2) along with 142(1) of the Act were issued and served upon the assessee. During the assessment the AO noticed that the assessee has claimed 30% deduction out of incentive bonus received. On further examination, the AO observed that incentive bonus received by the assessee was neither an allowance nor any reimbursement of expenses. The ld.AO, therefore, sought explanation from the assessee in this regard. Assessee submitted in view of judgment of Hon'ble Gujarat High Court in the case of Kiranbhai H. Shelat and others, 235 ITR 635 claim of the assessee was admissible. This explanation of the assessee was not found acceptable to the AO, and held the incentive bonus to be part of salary and to be assessed under the head "salary". The AO based his finding as per the certificate issued by the LIC of India and CBDT Circular dated 13.5.2009. The ld.AO disallowed the claim of the assessee and added the same to the total income of the assessee. In appeal before the ld.CIT(A), the assessee could not succeed, hence, the assessee is now before the Tribunal.

4. Before us, the assessee filed written submissions, in which it is submitted that the claim of the assessee is allowable as per CBDT Circular dated 19.12.1996 and the guidelines issued by Hon'ble Supreme Court in the case of Collector of Central Excise Vs. M/s.Dhiren Chemicals Industries. It is further pleaded that similar issue has been decided by the Tribunal in the case of Atul Amrutilal Mithanai Vs. ITO, in ITA No.718/RJT/2014, wherein the Tribunal has set aside similar issue to the file of AO for reconsideration in accordance with the CBDT

circular and the decision of the Tribunal in the case of Nitinbhai T. Bhupatani Vs. ACIT, in Tax Appeal No.13/RJT/2016 and others order dated 18.4.2018. On the other hand, the Id.DR while supporting orders of the Revenue authorities below submitted that there is no provision in the Income-tax Act to provide any deduction for earning incentive bonus, which is assessable under the head "salary" income, therefore, claim of the assessee is not allowable.

5. We have considered rival submissions and gone through the record. On this issue, we would like to take note of decision of the Tribunal in the case of Nitin T. Bhuptani (supra) relied upon the assessee to support to its case. The relevant portion of the decision reads as under:

"At this stage, before adverting to the specific claim made by the assessee, we would like to take note of LIC's scheme formulated for considering certain development officers employed with it as Senior Business Associates ("SBAs" for short). The SBAs were required to maintain the business at their premises and LIC would reimburse expenditure. We have taken cognizance of such scheme in the case of Nitinbhai T. Bhuptani Vs. ACIT, Cir.4, Rajkot in ITA Nos.13/RJT/2016 and others. Shri Bhuptani was Development Officer. We have taken cognizance of these appeals, and thereafter decided identical issues. The scheme reproduced in the Tribunal's order dated 18.4.2018 reads as under:

"Similarly During the accounting period there was senior business associates schemes as under.

Eligibility Criteria:

A Development Officer will be considered eligible to apply as Senior Business Associate if he/she

(i) Has completed 5 years service.

(ii) Has worked at a cost ratio of 3% or less in the last completed appraisal year. The cost ratio should be reckoned and rounded off to the nearest first decimal place; for example, if the cost ratio works to 3.04%, it should be taken as 3% and if it works to 3.05%, it should be taken as 3.1%.

- (iii) Is having his/her own office and
 (iv) Is willing to work as a senior Business Associate.

Functions:

Besides performing his/her basic duties and obligations as a Development Office, such selected Senior Business Associates shall be authorized to carry out market oriented/customers oriented functions through online portal from his/her Office. Initially, the Senior Business Associate shall be authorized to:

1. Collect Renewal Premiums from all policyholders.
2. Collect Proposal Deposits transaction from agents under his/her organization.
3. Register Proposal of agents working under his/her organization.
4. Submit Proposal of agents working under his/her organization through Electronic Media (E Proposal).

The following add on functions will be allowed to a Senior Business Associates.

1. Issue of Policy Status Reports.
2. Issue of Revival /Loan/Surrender value quotations.
3. Issue of forms.
4. Issue of Certificates to the policyholders for income tax purpose.
5. ULIP Statements.

Benefits and Allowance:

For the purpose of allowing benefits and allowances, such Senior Business Associates would be divided into 3 categories as shown below.

| Category | Place of Posting |
|----------|--|
| I | Cities of Mumbai, Kolkata, Chennai, Delhi & Noida, Faridabad, Ghaziabad, Gurgaon and Navi Mumbai. |
| II | Cities with Population exceeding 12 lakhs, except those mentioned in (I) above, any City in the State of Goa and Gandhi nagar. |
| III | Other Places. |

The population figures for the above purpose shall be as per the latest Census Report. Further, the Cities shall also include their Urban Agglomeration. The Classification of Cities for the purpose of payment of benefits shall be as shown below.

| | | |
|------------|-------------|--------------|
| Category-I | Category-II | Category-III |
|------------|-------------|--------------|

| | | |
|--|---|-------------------|
| Kolkata- including Municipal areas comprising city of kolkata (including Behala, Alipur, Cossipur, Tollygunge), Howrah, Barrackpore (including North Barrackpore), Garden Reach Barranagore South Suburban Muncipal Area Dum Dum (including south Dum Dum), Kamarhatti, Panihati, Knarda, Titahgarh, Garulia, Bhatpara, Naihati, Bally, Uttarpura, Konnagar, Rishra, Corampere, Baldyaball, Champdam, Bhadreshwar, Chadannagar, Hoogly, Chinsura, Budge Budge, Habra, Baruipur, Barasat and Uluberia. | Agra, Ahmedabad, Bangalore, Bhopal. Coimbatore (Including Suler), Gandhinagar, Goa (entire state),Hyderabad, Indore, Jaipur, Kanpur, Koichi, Lucknow, Ludhiana, Madurai (including Tirunagar), Nagpur, Patna, Pune (including Pimpri & Chinchwad). Surat, Vadodara, Varanasi, Vishakhapatnam (including Gajuwaka). | All Other Places. |
| Chennai | | |
| Mumbai -including areas comparising within the limits of mumbai Muncipal Corporation (Greater Mumbai), Dombivlli, Kalyan, Thane, Bhawandi, Uthasnagar Bassein Muncipalities and Navi Mumbai | | |
| New Delhi-Faridabad, Ghaziabad, gurgaon, Noida. | | |

The following benefits will be provided to such Senior Business Associates for marketing and customers related services:

1. One time interest free advance for making alternations in the office infrastructure, renovation, purchase of furniture etc. As shown below:

| Particulars | Category-I | Category-II | Category-III |
|---------------------------------|----------------------------|----------------------------|----------------------------|
| Maximum amount of Advance (Rs.) | 1,50,000 | 1,25,000 | 1,00,000 |
| Repayment Term | 4 Years (48 installments) | 4 Years (48 installments) | 4 Years (48 installments) |

| | | | |
|-----------------------------|------|---|--|
| Installment per month (Rs.) | 3125 | 1 st - 2565 2 nd - to 48 th - 2605 | 1 st -2240 2 nd -to 48 th -2080 |
|-----------------------------|------|---|--|

2. They will be reimbursed an amount as shown below, per month towards office maintenance subject to certain minimum number of renewal premium transactions, proposal Deposits transaction, Registration of proposal and submission of E Proposals.

| Particulars | Category-I | Category-II | Category-III |
|---|------------|-------------|--------------|
| Maximum amount of Reimbursement allowed per month (Rs.) | 25,000 | 20,000 | 15,000 |

The amount as shown above will be reimbursed subject to certain minimum transaction in a month, which would be as shown below:

| Particulars | 1 st Quarter (April to June) | 2 nd Quarter (July to September) | 3 rd Quarter (October to December) | 4 th Quarter (January to March) |
|--|--|--|--|---|
| Renewal Premium | 200 p.m. | 250 p.m. | 350 p.m. | 400 p.m. |
| Proposal Deposits | 40 p.m. | 60 p.m. | 70 p.m. | 70 p.m. |
| Submission/ Registration of E Proposal | 30 p.m. | 60 p.m. | 60 p.m. | 60 p.m. |

The Senior Business Associate who fulfills the above benchmark shall be allowed reimbursement towards Office maintenance along with reimbursement towards various transactions for that month. In case he does not fulfill the benchmark. He shall be only allowed reimbursement towards various transactions. However at the end of the quarter the Sr. Divisional Manger in-charge shall review the total transactions made and in case the Senior Business Associates has fulfilled the quarterly target based on the monthly target of the concerned months. He/she shall be paid the reimbursement towards Office maintenance including the month/s for which he could not achieve the benchmark. It may be noted that the deficit for a particular quarter shall not be carried forward to the next quarter.

Additional reimbursement:

The additional reimbursement allowed to such Senior Business Associates for collection of renewal premium/proposal deposits, submission and registration of E proposal shall be as shown below:

I) A transaction fee of Rs. 5/- per policy for Collection of renewal premium proposal deposits.

The transaction fee in case of proposal deposits will be paid when the BOC is adjusted to NB Premium.

II) A transaction fee of Rs. 107- per policy for collection of Proposal Deposits, Submission and registration of E-proposal.

No additional reimbursement will allowed to a Senior Business Associate for performing the add-on functions.

In the event of a Development Officer joining as a Senior Business Associate in the middle of the month, the reimbursement towards Office maintenance shall be allowed from the first of the following month. However, he/she shall be allowed reimbursement towards various transactions.

The Senior Business Associate has to continue to maintain the cost ratio at 3% in the subsequent appraisal years. However, Zonal Manger in-charge can waive the cost ratio up to 1% in that appraisal year in which the cost ratio has exceeded by 3%. Such concession will be allowed on 2 occasion after which no reimbursement shall be allowed towards Office maintenance. However the Senior Business Associate will be allowed additional reimbursement for renewal premium/proposal deposit transaction/submission and registration of E proposal. The reimbursement towards Office maintenance shall continue once the Senior Business Associate maintains the cost ratio at 3% or below.

Thus, these receipts were reimbursement of expenses incurred for on behalf of LIC for function which were normally performed by LIC.”

6. In the light of the above, let us examine claim of the assessee. The assessee claimed deduction of Rs.3,30,893/- in respect of expenditure incurred out of incentive bonus. The same was rejected by the AO on the ground that it was not allowable under section 10(14) of the Act, since the assessee has assessed under the head “salary”. It cannot be disputed that as a Development Officer of LIC, main task is to develop business for the LIC. For that, the DO has to undertake various

functions like, (i) collect renewal premiums from all policyholders, (ii) collect proposal deposits transaction from agents under his/her organization, (iii) register proposal of agents working under his/her organization, and (iv) submit proposal of agents working under his/her organization through Electronic Media (E Proposal), which is apart from work of selection and appointment of agents, training, guiding and motivating agents, etc. therefore, the expenses incurred by the assessee are to be wholly, necessarily and exclusively in performance of the duties of a Development Officer. However, no details or supporting evidence has been furnished by the assessee before us to support its claim. Atleast the assessee should have filed a certificate from the LIC for determining expenses possibly to be incurred by him for the purpose of procuring LIC business and earning incentive bonus. No such certificate has been submitted and any details to support its case. Therefore, we remit this issue back to the file of the Id.AO to decide the claim of the assessee in view of the CBDT circular dated 19.12.1996 and decision of the Tribunal in the case of Shri Nitin T. Bhuptani (supra). With this direction, we allow the grounds of appeal of the assessee for statistical purpose.

7. In the result, appeal of the assessee is allowed for statistical purpose.

Pronounced in the Open Court on 1st November, 2018.

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

**Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER**

Ahmedabad; Dated, 01/11/2018