

**(2006) 10 JH CK 0004**

**Jharkhand High Court**

**Case No:** Tax Case No"s. 27 of 1998 and 16 of 2000

Sri Mahinder Singh D.O.L.I.C.

APPELLANT

Vs

The Commissioner of Income

Tax, Bihar-II, Ranchi <BR> Sri

Basant Kumar Rungta,

Development Officer, LIC Branch

RESPONDENT

No. II Vs Commissioner of

Income Tax, Ranchi Circle-II,

Ranchi

**Date of Decision:** Oct. 11, 2006

**Acts Referred:**

- Income Tax Act, 1961 - Section 143(3), 147, 148, 154, 16

**Citation:** (2007) 1 BLJR 673 : (2008) 300 ITR 90

**Hon'ble Judges:** M.Y. Eqbal, J; D.P. Singh, J

**Bench:** Division Bench

**Advocate:** Anubha Rawat, for the Appellant; K.K. Jhunjhunwala, for the Respondent

### **Judgement**

M.Y. Eqbal, J.

Since in both the cases common question of law and facts are involved, they have been heard together and are being disposed of by this common order.

2. The main question of law which has been referred by the Income Tax Appellate Tribunal, Patna Bench, Patna in the instant reference u/s 256(1) of the Income Tax Act (in short the Act) is "Whether in the facts and circumstances of the case the Income Tax Appellate Tribunal, Patna was justified in holding that Incentive Bonus earned by the assessee, a Development Officer of Life Insurance Corporation of India (in short LIC) is salary as defined u/s 17 of the Act keeping in view the terms, conditions, rules and regulations of the service, and is not professional income" ?

3. The Assessee, a Development Officer of LIC of India filed his return of income, which was taken under scrutiny after approval by the Deputy Commissioner, Ranchi. Thereafter, an order u/s 143(3) of the Act was passed on 26.6.89 determining the total income of the assessee at Rs. 50,160/- Subsequently, an audit inspection was made on the point of loss of share dealings, depreciation of car and deduction allowance in the matter of Incentive Bonus given to the Development Officer. The matter was taken up by the Assessing Officer u/s 154 of the Act and later on approval was taken from the Deputy Commissioner for reopening of the case u/s 147 of the Act and notice u/s 148 of the Act was issued and the reassessment proceeding u/s 143(3) and 147 of the Act was completed by the A.O. on 16.3.94. In the reassessment proceeding the A.O. considered the Incentive Bonus as part of salary and, accordingly, disallowed the claim of expenditure.

4. Being aggrieved by the reassessment u/s 143(3) and 147 of the Act the Assessee went in appeal before the Commissioner, of Income Tax (Appeals) and by order dated 19.7.95 passed in I.T. Appeal No. 694/Ran/OTH/ 1994-05, the Commissioner set aside the order of disallowance of claim of expenditure out of Incentive Bonus.

5. The Revenue, being aggrieved by the order of Commissioner of Income Tax (Appeals) preferred appeals before the Income Tax Appellate Tribunal being Revenue Appeal Nos. 604 and 605(Pat.)/ 1995 and the Appellate Tribunal, vide order dated 28.7.98, held that the incentive bonus earned by the Assessee, who is a Development Officer in LIC of India, is a part of salary and not professional income.

6. Undisputedly, Incentive bonus is given to a Development Officer in accordance with a scheme called "The Scheme of Incentive Bonus of Development Officers of LIC of India, 1978". Under the said scheme, a formula has been provided for the purpose of determining Incentive Bonus payable to a Development Officer in a particular circumstance. It is also not in dispute that the Development Officer is a salaried employee of the Corporation and the main nature of job of the Development Officer is to ensure development and increase of production in the Life Insurance business. Besides salary, Incentive Bonus is also payable to the Development Officer keeping in view and in consonance with the business procured by the said officer.

7. The Supreme Court in the case of Gestetner Duplicators Pvt. Ltd. Vs. Commissioner of Income Tax, West Bengal, held that if under the terms of the contract of employment remuneration or recompense for the services rendered by the employee is determined at a fixed percentage of turn over achieved by him, then such remuneration or recompense will partake of the character of salary, the percentage basis being the measure of the salary and, therefore, such remuneration or recompense must fall within the expression "salary" as defined in Rule 2(h) of part A of the Fourth Schedule to the Act.

8. The Full Bench of Karnataka High Court in the case of Commissioner of Income Tax. v. M.D. Patil 1998 (229) ITR 7 after discussing the law in detail have held that Incentive Bonus given to Development Officer of LIC of India is part of Salary and only standard deduction is admissible u/s 16 of the Act.

9. In our considered opinion also the Incentive Bonus earned by the assessee, a Development Officer of LIC of India, is salary as defined u/s 17 of the Act and, therefore, the assessee is entitled to standard deduction u/s 16 of the Act. The reference is answered accordingly.

D.P. Singh, J.

10. I agree.