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IN THE HIGH COURT OF ORISSA AT CUTTACK

WRIT PETITION (CIVIL) No.593 of 2003

(An application under Articles 226, 227 and 265 of the Constitution of India)

Life Insurance Corporation of India *Petitioners*
and Another

-versus-

The Income Tax Officer (TDS),
Gajapati Nagar, Berhampur and *Opposite Parties*
Others

Appeared in this case:

For Petitioner

Mr. S.K. Jena, Advocate

For Opposite Parties

Mr. S.S. Mohapatra
Senior Standing Counsel (IT)

CORAM:
THE CHIEF JUSTICE
JUSTICE B.P. ROUTRAY

JUDGMENT
24.08.2021

Dr. S. Muralidhar, CJ

1. This a petition by the Life Insurance Corporation of India (LIC) challenging an order dated 22nd March, 2001 passed by the Income Tax Officer (TDS), Gajapatinar, Berhampur under Section 201 of the Income Tax Act, 1961 ('Act').

2. By the aforementioned order, the ITO (TDS) held that in respect of 12 development officers of LIC there was a short deduction and non-deduction of the tax in the sum of Rs.1,50,669/- for the Financial Year 1999-2000 and that the said amount had to be paid by LIC to the Central Government.

3. The above order resulted in an attachment of the account of LIC by Income Tax Department (Department). While issuing notice in the present petition on 1st May, 2003 this Court noted the submission of counsel for the LIC that a sum more than the one sought to be recovered had already been recovered by the Department. Accordingly, he did not press for stay of the attachment. Taking note of the said submission, this Court ordered that the attachment of the account of LIC by the Department shall stand vacated.

4. This Court has heard the submissions of Mr. S.K. Jena, learned counsel for the Petitioners and Mr. S.S. Mohapatra, learned Senior Standing Counsel for the Opposite Parties (Department).

5. It is submitted by learned counsel for the LIC that the impugned order was passed by the ITO without even a show cause notice being issued to it. He submits that against the impugned order a revision petition under Section 264 of the Act was filed before the Commissioner of Income Tax, Bhubaneswar (Opposite Party No.2) on 28th January, 2002. The Commissioner

dismissed the said revision petition by order dated 30th September, 2002 relying *inter alia* on the CBDT circular dated 1st February, 2001 where it was mentioned that conveyance/additional allowance being taxable are liable for deduction of tax at source. However, LIC contends that in the assessment order the ITO has himself concluded that the returns filed by LIC claimed that the aforementioned two allowances were not income under Section 10 (14) of the Act and this was accepted by the Department.

6. In the counter affidavit filed on behalf of the Department, it is pointed out that a survey had been conducted in the office of the LIC on 5th March, 2021 when the above short deduction was notice and brought to the attention of its Branch Manager. Therefore, the consequential order under Section 201 of the Act would not have come as a surprise to LIC. There is also no provision under the Act to issue a show cause prior to passing an order under Section 201 of the Act. It is further pointed out that according to Clause (i) of Section 10 (14) the special allowance or benefit, not being in the nature of a perquisite within the meaning of Section 17 (2), specifically granted to meet expenses wholly necessarily and exclusively incurred in the performance of the duties at an office or employment of profit as may be prescribed to the extent to which such expenses are actually incurred for that purpose.

7. The Department points out that the language of clause (2) of Section 17 emphasizes that (i) the expenses should have been

actually incurred during the year wholly, necessarily and exclusively in the performance of the duties of an office or employment; and (ii) the expenses so incurred should be for the purpose of duties of an office or employment. Rule 2BB (1) of the Income Tax Rules ('IT Rules') has only prescribed such allowance and not the extent of its allowability. It is accordingly contended by the Department that the submission of the Petitioner Assessee that the conveyance and additional conveyance allowance were not to be included in the total income and the Rules framed thereunder had only restricted the allowance is a misrepresentation of the legal position.

8. It is further pointed out that the Central Board of Direct Taxes (CBDT) instructions dated 18th March, 1991 followed by another circular issued on 23rd March, 1995 states that consequent upon the amendment to Section 10 (14) of the Direct Taxation Laws (Amendment), 1980 with effect from 1st April, 1989 all circulars/instructions and clarifications issued by the CBDT regarding Section 10 (14) of the Act after 31st March, 1989 were to have with effect from the Assessment Year 1989-90 onwards.

9. Reference is also made to the CBDT Circular No.781 dated 5th November, 1999 which made it clear that all the persons responsible for tax deduction at source particularly from salary should follow the guidelines issued vide Notification No.S.O.617(E) dated 7th July, 1995 (F. No.142/9/95-TPL) and

S.O. No.395(E) dated 13th May 1998 in connection with grant of exemption under Section 10 (14) of the Act.

10. No rejoinder affidavit has been filed to the counter affidavit of the Opposite Parties.

11. The short question that arises is whether LIC had a statutory obligation to deduct tax at source while paying the aforementioned allowances to its development officers?

12. The impugned orders of the ITO and the Commissioner give detailed reasons why LIC's contentions cannot be accepted. Having heard learned counsel for the parties, the Court is unable to arrive at a different conclusion. The reasons follow.

13. In support of the contention that conveyance/additional allowance are not income and therefore not liable for deduction of tax at source, LIC relies on a CBDT Circular dated 19th November 1986. The contention of the Department on the other hand is that in terms of instructions dated 18th March, 1991 the CBDT followed by another circular dated 23rd March, 1995 consequent upon the amendment to Section 10 (14) of the Direct Taxation Laws (Amendment), 1980 with effect from 1st April, 1989 all circulars/instructions and clarifications earlier issued by the CBDT as regards Section 10 (14) of the Act would cease to have with effect from AY 1989-90 onwards. Therefore, it is to no avail for LIC to rely on its earlier instructions which were based on

earlier circulars. A clarification to this effect was issued by the CBDT to the LIC on 4th January, 2001.

14. As pointed out by the Department, the relevant Rule 2BB (1) of the IT Rules only prescribes the types of allowances and not the extent of their allowability. After the aforesaid amendment to Section 10 (14) of the Act, the legal position, as explained in the CBDT circulars issued thereafter, is that the expenditure reimbursed by LIC would qualify for deduction under Section 10 (14) of the Act. If the expenditure is incurred by the Development Officer, he cannot claim deduction under Section 10 (14) of the Act.

15. It appears that LIC devised a proforma for the development officer to fill up certifying the expenditure incurred by them for development of insurance business. A portion of the allowance thus granted was then treated as exempt under Section 10 (14) of the act. Way back on March 12th, 1997 the CBDT informed the Chairman LIC that such procedure was not in accordance with Section 10 (14) of the Act read with Rule 2 BB (i) of the IT Rules and that “unless an allowance is notified under Section 10 (14) (i) of the Act no portion of it can qualify for tax exemption.”

16. Consequently, the Court finds no ground made out for interference with the impugned orders of the ITO and the Commissioner.

17. The writ petition is accordingly dismissed. The interim order stands vacated.

18. An urgent certified copy of this order be issued as per rules.

(S. Muralidhar)
Chief Justice

(B.P. Routray)
Judge

S.K.Jena/PA

