farce of the inquiry before him. He must give full opportunity to the parties to file their claim/replies, if any, and allow them to adduce evidence in support of their respective pleas. Since the Arbitrator did not allow the contractor to lead his evidence, I agree with the trial court that the Arbitrator acted in violation of the principles of natural justice and committed judicial misconduct. In this view of the matter, the impugned order as well as the award dated 12th February, 1976 cannot be sustained.

(4) In the result, the revision petition is allowed and the impugned order dated 3rd December, 1980 passed by the District Judge, Ferozepore making the award a Rule of the Court set aside. Consequently, the award dated 12th February, 1976 is also set aside. It will, however, be open to the Union of India to appoint a fresh Arbitrator and if so appointed he shall proceed in accordance with law.

J.S.T.

Before G.C. Garg and N.K. Agarwal, JJ

B.M. PARMAR,—*Petitioner*

versus

THE COMMISSIONER OF INCOME TAX, AMRITSAR,—*Respondent*

I.T.R. Nos. 105 and 106 of 1986

The 27th October, 1998

Income Tax Act, 1961—Ss. 16 and 256—Incentive bonus—Regular employee of L.I.C.—Entitled to allowances and benefits in respect of his duties—Incentive bonus whether profit of business or profession—Held, no.

Held that a taxing statute is to be interpreted strictly. A provision has to be construed keeping in view the purpose and object for which it is enacted. The concept of commercial principles of business practice would not be relevant unless it is found to be inevitable. Deduction under Section 16 is actually meant to meet various expenses incurred by an employee in the course of his employment. The assessee has not been able to show that he was

not paid any travelling allowance while going to the field in connection with the insurance business. He cannot claim second reimbursement from the amount of Incentive Bonus. He, being an employee of LIC, is entitled to the allowances and benefits in respect of his duties as admissible to other employees.

(Paras 51 and 52)

Further held, that there is no dispute to the fact that the Development Officers are whole time employees of LIC. They are employed for promoting and developing life insurance business. Their primary concern and functions are to secure more business for the LIC. It cannot, therefore, be said that while working in the field they are doing work in a different capacity. whatever income is received by the Development Officers from LIC, that is by way of salary and is to be assessed under the same head. There is nothing on record to show that under the Scheme of Incentive Bonus framed by the LIC in 1978, they were required to perform a duty different from the one for which they were appointed. In this light, the extra income earned by the Development Officers cannot be said to be assessable under the head 'profits and gains of business or profession'.

(Para 26)

A.K. Mittal, Advocate and Trilochan Singh, Advocate with him, for the petitioner.

R.P. Sawhney Sr. advocate with Rajesh Bindal, Advocate, for the respondent.

JUDGMENT

N.K. Agrawal, J.

(1) The following question of law has been referred by the Income-Tax Appellate Tribunal, Amritsar Bench (for short, the Tribunal) at the instance of the assessee under Section 256(1) of the income-tax Act, 1961 (for short, the Act) :—

> "Whether, in the facts and the circumstances of the case, the Appellate Tribunal is correct in holding that the income from Incentive Bonus received by the assessee, a Development Officer of the Life Insurance Corporation of India, is liable to be taxed under the head of income 'Salary' and no deduction against that was admissible under the section relating to the taxing of salary income."

(2) The assessee derived income from salary and interest. He was employed in the Life Insurance Corporation of India (for short, the LIC') as a Development Officer. He filed return of his income for the Assessment year 1980-81 declaring income at Rs. 15,880. Salary as per the salary certificate was shown by the assessee at Rs. 26,729. He claimed deduction of Rs. 3,007 from the Incentive Bonus amounting to Rs. 7,517. The assessee filed his return of income for the Assessment year 1981-82 declaring income at Rs. 29,140. In this year also, the assessee claimed deduction of Rs. 9,020 on account of expenses at 40% of the Incentive Bonus amounting to Rs. 22,549 received by him.

(3) The Assessing Officer declined to grant deduction from the amount of Incentive Bonus in both the years. The assessee went up in appeal before the Appellate Assistant Commissioner for both the years, but failed. His appeals before the Tribunal also met the same fate.

(4) The case put forward by the assessee before the Assessing Officer was that Incentive Bonus was given to him by the LIC not as part of salary but by way of professional income earned by him for more insurance business done during the year. It was given for performing business activity in the insurance field beyond duty hours. He also incurred expenses for securing more insurance business. Incentive bonus was not paid by way of statutory bonus granted under the Payment of Bonus Act, 1965. Incentive Bonus actually depended upon the results of extra efforts made in the field of insurance business. It was also claimed that the Development Officers were different from other employees of LIC in view of the nature of their duties and conditions of work. They received remuneration from the LIC partly as fixed salary and partly on the basis of the results. Incentive Bonus was linked to the insurance business secured in excess of the normal business and normal premium. Since it was income under the head 'Profit and gains of business or profession', expenditure incurred in securing more business was deductible from the amount of Incentive Bonus before subjecting it to tax.

(5) The plea raised by the assessee is two-fold. Firstly, the amount of Incentive Bonus was not part of salary and was not assessable under the head 'salaries'. Instead, it was received by way of 'Profits and gains of profession'. Secondly, the expenditure incurred in the course of performance of duties was eligible for deduction from the gross amount of Incentive Bonus. It is therefore,

argued that even if the amount of Incentive Bonus is not assessed under the head 'Profits and gains of business or profession', it may be assessed under the head 'Salaries' as 'profits in lieu of or in addition to the salary'. In that situation, the net profits would alone be subjected to tax in accordance with the commercial principles and business practices. It is the real income which should be brought to tax and not the gross amount of Incentive Bonus.

(6) Shri A.K. Mittal, learned counsel for the assessee, has vehemently argued that the amount of Incentive Bonus was not received by a Development Officer as part of his salary but as income from profession. The Development Officers are required to go to the field for the purposes of development of insurance business. Expenses are, therefore, incurred while procuring more insurance business. If first year's premium earned by a Development Officer was in excess of five times the total expenses incurred on him by the LIC, the Incentive Bonus could be paid to the Development Officer at the rate of 6% of such income. Similarly, different rates of Incentive Bonus have been laid down in the Scheme for still higher premium earned for the LIC in a year. Thus, Incentive Bonus depended on the personal efforts and the volume of business procured by the Development Officer for his employer, the LIC.

(7) Shri Mittal, learned counsel for the assessee, has placed before us a copy of the scheme, relating to the payment of Incentive Bonus, framed by the LIC in the year 1978. this scheme is called. "The Scheme of Incentive Bonus of Development Officers of LIC, 1978". The aforesaid incentive scheme also lays down the formulae for determining Incentive Bonus. Shri Mittal has pointed out that the expression 'Annual Remuneration' has been defined in the scheme and the amount of Incentive Bonus has not been included in 'Annual Remuneration'. Shri Mittal has, therefore, contended that if the annual remuneration; as defined in the Incentive Scheme did not include Incentive Bonus, it would be improper to treat the Incentive Bonus as part of salary. He has argued that the Incentive Bonus was actually assessable as professional Income of the Development Officer. It is production-oriented income and it becomes payable on achieving a higher target. When the actual performance of a development Officer is beyond the normal level of performance expected of him, he is to be paid Incentive Bonus. It is given to those who are eligible under the requisite conditions specified in the Incentive Bonus Scheme of 1978. It is a business or professional earning and it depended upon the number of insurance policies

procured and the nature of territory operated.

(8) Shri Mittal has further argued that the Insurance Agents are allowed deduction of expenses from the Incentive Bonus under Circular No. F8/2/57/IT/AI, dated 18th October, 1968 issued by the Central Board of Direct Taxes, New Delhi (for short, the 'Board'). Drawing analogy from the circular of the Board, Shri Mittal has argued that the Development Officers should also be allowed the benefit of deduction inasmuch as they were performing almost the same duties as were performed by the insurance agents. Actually, the Development Officers worked in the field through the Insurance Agents only and the volume of business also depended upon the joint efforts of the Development Officers and the Insurance Agents.

(9) The next argument of Shri A.K. Mittal, learned counsel for the assessee, is that the Incentive Bonus, even if treated under the head 'Salaries', was in the nature of 'profits in addition to the salary' under sub-clause (iv) of clause (1) of Section 17 of the act. If it is paid by the LIC as profits in addition to salary, it is then the net profit which should be brought to tax and not the gross receipts. Net income after excluding therefrom the necessary expenses incurred while earning the Incentive Bonus would be the real income chargeable to tax.

(10) Shri A.K. Mittal, learned counsel for the assessee, has placed reliance on a decision of the Orissa High Court in *Commissioner of Income-tax* v. *Durga Kumar Nanda,* (1) and a decision of the Rajasthan High Court in *Commissioner of Income Tax* v. *Pramod Kumar Jain,* (2). On the basis of the aforesaid two decisions, Shri Mittal has argued that remuneration other than salary received by an employee was not assessable as salary. In the first case, certain remuneration was received by a Director from the Company. It was noticed that there was no relationship of employer and employee between the Company and its Director. It was, therefore, held that the remuneration received by the Director from the Company could not be held to be salary from which he could claim deduction under Section 16(1) of the Act. In the second case, salary was received by a partner. The partner claimed deduction in respect of such salary. It was held that a firm is not a legal person and has no legal existence apart from its partners. Though under the Income-tax law, it is a unit of assessment by

(1) (1995) 311 I.T.R. 639
(2) (1995) 216 I.T.R. 598

virtue of the special provisions, it cannot be considered that the firm is the employer of its partners. it was, therefore, held that the partner was not entitled to special deduction in respect of such salary.

(11) Both the aforesaid decisions are, therefore, found to be distinguishable and do not help the assessee at all.

(12) Shri A.K. Mittal, learned counsel for the assessee, has also placed reliance on two decisions of the Bombay High Court, i.e., (i) *Commissioner of Income-tax* v. *M.C. Shah*, (3), and (ii) *Commissioner of Income-tax* v. *A.A. Baniyan* (4). In the first case, the question referred to the High Court under Section 256(2) of the Act was in respect of the deduction at 40% from the amount of Incentive Bonus. In that case, the Tribunal had held that the Incentive bonus or commission received by the assessee from the LIC was not salary income but income from business or profession. The Tribunal also held that on such Incentive Bonus, the assessee was entitled to deduction @ 40% of the Incentive Bonus by way of estimated expenses for earning the income for which incentive bonus was paid. The deduction was upheld by the High Court after noticing that the Department had not questioned the order of the Tribunal insofar as it concluded that the Incentive Bonus/commission received by the assessee from the LIC was income from business or profession. What the Department had challenged was that 40% of the Incentive Bonus should not have been allowed as deduction. It was held that the question sought to be referred to the High Court was a question of fact, which the Court did not like to go into. Similarly, in the second case, deduction at 40% was under reference. There also, the amount of Incentive Bonus was treated to be the professional income of the assessee. That finding was not under challenge before the High Court. The question referred to the High Court related to the deduction at 40% of the Incentive Bonus. It was held that the deduction so allowed was based on a finding of fact and, therefore, no question of law arose.

(13) The aforesaid two decisions of the Bombay High Court do not help the assessee insofar as the question relating to the nature of income is concerned. The High Court, in the absence of a question on the nature of income, did not go into the controversy as to whether Incentive Bonus was part of salary or was assessable as

(3) (1991) 189 I.T.R. 180
(4) (1992) 197 I.T.R. 717

profits and gains of business or profession. The only question before the High Court in both the cases centred around the deduction claimed by the assessee at 40% of the Incentive Bonus.

(14) Shri Mittal has also strongly relied upon a decision of the Gujarat High Court in *Commissioner of Income-tax* v. *Kiranbhai H. Shelat and others,* (5). It was held therein that Incentive Bonus received by a Development Officer of LIC was chargeable to tax under the head 'Salaries', but deduction at 40% of the Incentive Bonus was allowable so as to enable him to meet the necessary expenses incurred by him.

(15) Shri A.K. Mittal, learned counsel for the assessee, has also argued that the Development Officers earned Incentive bonus in a different capacity, functioning as professionals. When they went to the insurance field to procure more business, they were working as professionals and in a capacity other than that of employees. Reliance is placed by Shri Mittal on a decision of the Allabahad High Court in *K.P. Bhargava* v. *Commissioner of Income-tax, U.P., Lucknow,* (6). That was a case where the assessee was appointed as a treasurer and also as a guarantee commission agent of a bank. As a treasurer, the assessee was to be incharge of the Cash Department. He was responsible for the loss caused to the Bank by his conduct or, the conduct of the Cash Department employees who were employed by him and who were under his control. As a guarantee commission agent, the assessee had to recommend to the bank persons who wanted to borrow money and if the bank agreed to lend money to any person recommended, the assessee got a commission. If any approved borrower failed to return to the bank the money advanced, the bank was entitled to recover the debt from the assessee and from the security money deposited by him. The assessee had to bear all expenses in making enquiries about the solvency of the borrowers. The question before the Court was whether the work of the assessee as treasurer and guarantee commission agent was service or was partly service and partly business. It was held that the fixed pay received by the assessee as treasurer of the bank was salary received by him as servant of the bank, while the remuneration received by him for the work of guarantee commission agent was income from business.

(16) In the aforesaid case, the assessee was working in dual capacity and was paid remuneration accordingly. In the case in hand, the Development Officer did not perform any duty other than

(5) (1998) 147 C.T.R. 43 (Gujarat)
(6) (1954) 26 I.T.R. 489

that which was his normal duty. His normal duty was to promote life insurance business. He had to go to the field for procuring more and more business for his employer. If he exceeded the prescribed limit, he was granted Incentive Bonus as a reward. The relationship of employer and employee did not cease to exist when the Development Officer went to the field to procure more business. Moreover, the Development Officer worked in the field through the insurance agents. The nature of duty of a Development Officer was, therefore, not different when he worked in the office and when he worked in the field. His primary concern was to promote the life insurance business and procure more policies for the LIC. The aforesaid decision of the Allahabad High Court does not, therefore, help the assessee.

(17) Shri A.K. Mittal, learned counsel for the assessee, has also argued that it is the real income which should be subjected to tax. His main contention is that if the gross receipts are brought to tax, the concept of commercial principles and business practice stands ignored. In support of this contention, Mr. Mittal has placed reliance on a decision of the Supreme Court in *Badridas Daga* v. *Commissioner of Income-tax*, (7). That was a case where the assessee, carrying on the business as money-lender, dealer in shares and bullion and commission agent, suffered a loss on account of embezzlement by his employee. The assessee did his business through the agent who held a power of attorney, which conferred on him large powers of management including authority to operate on bank accounts. The agent withdrew from the bank account certain money and applied it in satisfaction of his personal debts incurred in speculative transactions. The assessee claimed deduction on account of the loss sustained by him as a result of misappropriation by the agent on the ground that it was incidental to the carrying on of the business. Their Lordships of the Supreme Court accepted the assessee's plea and allowed the deduction. Depending upon the ratio of the aforesaid decision, Shri Mittal has argued that all legitimate deductions, including losses, are allowable from the gross income if those were incidental to the business. Since the Development Officers were engaged in procuring more business for the LIC, the necessary expenses incurred by them while performing that duty should be allowed as deduction before bringing the income to tax.

(18) Shri Mittal has also relied upon another decision of the

(7) (1958) 34 I.T.R. 10 (S.C.)

Supreme Court in *Poona Electric Supply Co. Ltd.* v. *Commissioner of Income-tax, Bombay City-I* (8). it has been observed therein that "Income-tax on the real income. i.e. in the case of a business, the profits arrived at on commercial principles subject to the provisions of the Income-tax Act." Shri Mittal has contended that whatever gross receipts were available in the hands of the Development Officers, those receipts were not taxable without ascertaining the real income in their hands. Since they had to incur certain necessary expenditures in the course of performance of duties, such expenditures were eligible for deduction while arriving at the real income in their hands.

(19) Shri R.P. Sawhney, learned senior counsel for the Department, has, on the other hand, argued that the amount of Incentive Bonus was nothing but remuneration though determined at a fixed percentage of the total premium earned on the insurance business secured by a Development Officer during a year. He has argued that it was the duty of the Development Officers to develop and promote life insurance business. They were, therefore, paid Incentive Bonus for extra efforts. They would not earn it if they were not in the employment of LIC. Incentive Bonus was additional remuneration for the services rendered by the employees for exerting more strain to get more life insurance business. Shri Sawhney has argued that the only permissible deduction under the head salaries is the standard deduction specified in Section 16(i) of the Act. The Development Officers received Incentive Bonus as employees of the LIC. Any receipt by them from the LIC will be includible and taxable under the head 'salaries'. This income accrued to the Development Officers by virtue of their office. Payment was made to them as a reward for acting well as an employee. It was, therefore, not assessable under the head 'Profits and gains of business or profession'. It was remuneration paid by the employer for extra services rendered by the employee. The development Officers received remuneration partly by way of fixed salary and partly by way of Incentive Bonus. It was linked to the percentage of the insurance business procured in excess of certain premium income. It was not a payment for extra employment considerations. It is an emolument for enhanced business.

(20) Shri Sawhney has also argued that the benefit of deduction allowed by the Board in the cases of insurance agents was not to be extended to the Development Officers in asmuch as

(8) (1965) 56 I.T.R. (Sh. N. 29) 521 (S.C.)

the agents were not the employees of the LIC. Therefore, the benefit of deduction allowed by the Board to the insurance agents cannot be available to the Development Officers. It is also clarified that the Board has declined such benefits to Development Officers as conveyed in instruction No. 1774.

(21) Shri R.P. Sawhney, learned senior counsel for the Department, has further argued that if a distinct and specific head of income has been given in Section 15 of the Act, the income received by the employee would only be assessable under that specific head. An employee cannot be allowed to divide his income under two different heads according to his convenience. If the remuneration paid to the employee is assessable under the head salaries, no part of such income is assessable under the head 'profits and gains of business or profession'.

(22) Shri Sawhney has placed reliance on a decision of the Delhi High Court in *Commissioner of Income-tax* v. *Dr. Rameshwar Lal Pahwa*(9). It was held therein that the amount deducted in computing the income from house property cannot be included in the hands of the assessee as income from other sources. It was observed that by the computation of income under the head 'property income' on the basis of the standard rent, the assessment of that source of income is exhausted and it cannot be taxed again though, in fact, some real income has escaped assessment. Shri Sawhney, drawing strength from the ratio of the aforesaid decision, has argued that the emoluments received by the Development Officers from their employer cannot be treated as income under two different heads.

(23) Shri Sawhney has also placed reliance on a decision of the Supreme Court in *Sultan Brothers Private Limited* v. *Commissioner of Income-tax, Bombay City-II.* (10) It has been held therein that the several heads of income mentioned in the Income-tax Act are mutually exclusive, each head being specific to cover the income arising from a particular source, and it cannot be said that any one of the sections of the Act is more specific than another. Therefore, a particular variety of income must be assignable to one or the other of those sections. Shri Sawhney has argued that the income received from the employer by an employee cannot be bifurcated or divided under two different heads. The entire income is, therefore, assessable under the head salaries.

(9) (1980) 123 I.T.R. 681
(10) (1964) 51 I.T.R. 353 (S.C.)

(24) Shri R.P. Sawhney, learned Senior Counsel for the Department, has also placed reliance on two decisions of the Andhra Pradesh High Court, viz., (i) *K.A. Choudary* v. *Commissioner of Income-tax*(11). and (ii) *Commissioner of Income-tax* v. *B. Chinnaiah and others*(12). In both the cases, the amount of Incentive Bonus paid to the Development Officers of the LIC was held to be taxable under the head 'salaries'. Permissible deductions under the said head were to be only allowed as specified under Section 16 of the Act.

(25) Shri Sawhney has also pointed out that the High Courts of Orissa, Rajasthan and Karnataka have also taken the view that the Incentive Bonus received by the Development Officers of the LIC was part of salary and was assessable as such. No deductions other than those permissible under Section 16 of the Act were allowable. These decisions are : (i) *Commissioner of Income-tax* v. *Govind Chandra Pani* (13), (ii) *Commissioner of Income-tax* v. *Sri Anil Singh*(14); (iii) *Commissioner of Income-tax* v. *Shiv Raj Bhatia*(15), (Rajasthan); and (iv) *Commissioner of Income-tax* v. *M.D. Patil*(16).

(26) The first question which needs to be decided is whether Incentive Bonus was assessable as profits and gains of business or profession. "There is no dispute to the fact that the Development Officers are whole-time employees of LIC. They are employed for promoting and developing life insurance business. Their primary concern and functions are to secure more business for the LIC. It cannot, therefore, be said that while working in the field they are doing work in a different capacity. They go to the field through the insurance agents. Their status does not, therefore, change while working in the field for the purposes of getting more business for the LIC. In this situation, it cannot be said that the Development Officers are working in a different capacity while procuring more business. They might have professional expertise in the insurance business, but that would not change their status while they work in the field. They remain Development Officers in the employment of LIC while working in the field also. Whatever income is received

(11) (1990) 183 I.T.R. 29
(12) (1995) 214 I.T.R. 368
(13) (1995) 213 I.T.R. 783 (Orissa)
(14) (1995) 215 I.T.R. 224 (Orissa)
(15) (1997) 227 I.T.R. 7 (Rajasthan)
(16) (1998) 229 I.T.R. 71 (Kar.) (F.B.)

by the Development Officers from LIC, that is by way of salary and is to be assessed under the same head. There is nothing on record to show that under the Scheme of Incentive Bonus framed by the LIC in 1978, they were required to perform a duty different from the one for which they were appointed. In this light, the extra income earned by the Development Officers cannot be said to be assessable under the head 'profits and gains of business or profession".

(27) The Supreme Court had an occasion to examine the expression 'salary' in *Gestetner Duplicators Pvt. Ltd.* v. *Commissioner of Income-tax* (17). It was observed as under :—

> "If under the terms and conditions of employment remuneration or recompense for the services rendered by the employee is determined at a fixed percentage of turnover 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 the Fourth Schedule to the Act."

(28) Section 14 of the Act specifies the following heads of income :—

A. — Salaries.

B. — Interest on Securities (Omitted by the Finance Act, 1989 w.e.f. 1st April, 1989)

C. — Income from house property.

D. — Profits and gains of business or profession.

E. — Capital gains.

F. — Income from other sources.

(29) The assessee received Incentive Bonus from the same source from which he received salary. He received Incentive Bonus for the same work for which he was paid salary. It is another matter that he was made eligible to receive Incentive Bonus for showing better results, but that would not change the nature of his duties.

(17) (1979) 117 I.T.R. 1

(30) Under the head 'salaries' in Section 15 of the Act, any salary due from an employer or a former employer, whether paid or not, and any arrears of salary paid or allowed to the employee is chargeable to tax. Any salary paid in advance is also included in the total income as laid down in Explanation (1) under Section 15. Under Explanation (2), any salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from the firm shall not be regarded as "salary'.

(31) Deductions from the income from salaries are allowable under Section 16 of the Act. Section 16, prior to amendment effective from April 1, 1975, allowed deductions in respect of expenses incurred on the purchase of books, on entertaining people connected with the employer's business, amount paid by way of taxes on profession, etc. expenditure on the maintenance of a conveyance and other expenditure actually incurred by the assessee wholly, necessarily and exclusively in the performance of his duties. After amendment effective from April 1, 1975, standard deduction at a fixed rate/amount has been allowed under clause (i) of Section 16. Further deductions in respect of entertainment and on account of tax on employment are also allowed under clauses (ii) and (iii) of Section 16.

(32) "Salary" has been defined in clause (1) of Section 17 of the Act as under:—

17. For the purposes of Sections 15 and 16 and of this section,—

(1) "salary" includes,—

(i) wages;

(ii) any annuity or pension;

(iii) any gratuity;

(iv) any fees, commissions, perquisites or profits in lieu of or in addition to salary or wages;

(v) any advance of salary;

(va) any payment received by an employee in respect of any period of leave not availed of by him;

(vi) the annual accretion to the balance at the credit of an employee participating in a recognised provident

fund, to the extent to which it is chargeable to tax under rule 6 of Part A of the Fourth Schedule; and

(vii) the aggregate of all sums that are comprised in the transferred balance as referred to in sub-rule (2) of rule 11 of Part A of the Fourth Schedule of an employee participating in a recognised provident fund to the extent to which it is chargeable to tax under sub-rule (4) thereof."

(33) Sub-clause (iv) of clause (1) of Section 17 makes it clear that the amount of commission received by an employee from his employer will be treated as part of salary. Similarly, the profits in lieu of or in addition to any salary or wages are also made part of the salary. It is now to be seen whether the Development Officers received Incentive Bonus by way of commission or as profits in addition to salary.

(34) The 'expression profits in lieu of salary' has been defined in clause (3) of Section 17 as under :—

"Profits in lieu of salary' includes—

(i) the amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment or the modification of the terms and conditions relating thereto;

(ii) any payment (other than any payment referred to in clause (10), clause (10A), clause (10B), clause 11, clause 12 or clause 13A of section 10, due to or received by the assessee from an employer or a former employer or from a provident or other fund (not being an approved superannuation fund), to the extent to which it does not consist of contributions by the assessee or interest on such contributions."

(35) A close perusal of the above definition would show that any compensation received from the employer in connection with the termination of employment or a modification of the terms and conditions of employment would be treated to be in the nature of profits in lieu of salary. Similarly, any payment received from the employer or from a provident fund or a superannuation fund, to the extent to which it did not consist of contributions by the assessee, would also be part of 'profits in lieu of salary'.

(36) The amount of Incentive Bonus cannot be said to have been paid as part of profits by the LIC to the Development Officers. In the Incentive Bonus Scheme framed by the LIC in 1978, there is no mention that any profit earned by the LIC is made distributable as Incentive Bonus amongst the Development Officers for showing better results. In the absence of anything on record to show that the LIC gave Incentive Bonus in lieu of distribution of its profits, it would not be appropriate to hold that the Incentive Bonus in the hands of the Development Officers was "distributed profits" in addition to salary. The word 'profits' would essentially mean profits of the employer. If the remuneration is paid by employer by sharing the profits, that would be treated to be profits in addition to salary in the hands of the employee.

(37) The Incentive Bonus cannot be treated to be payment of part of profits of LIC to the Development Officers. It is by way of commission for higher output and better results.

(38) 'Commission', according to Webster's New International Dictionary, is the 'percentage or allowance made to a factor or agent for transacting business for another.' It would, thus, appear, in the light of the aforesaid definition, that an employee may be entitled to receive, as part of his remuneration, a commission to be calculated on the basis of a fixed percentage of the turnover of the employer or to be calculated on any other basis.

(39) In sub-clause (iv) of clause (1) of Section 17, any fee, commission, perquisite or profit has been included in the definition of 'salary'. Incentive Bonus is calculated on the basis of the total premium collected by a Development Officer against the number of policies procured. It is not paid on the basis of the profits earned by the LIC. It would not, therefore, be appropriate to say that Incentive Bonus was paid as profit in addition to salary. It was paid on the basis of the volume of business and was, therefore, in the nature of commission. We, therefore, hold that the amount of Incentive Bonus received by the assessee was not in the nature of profits distributed or paid in addition to salary but was in the nature of commission paid to him for doing extra business for the employer.

(40) The question for determination raised by the assessee is primarily based on his plea that he had to incur certain necessary expenditures in the course of his employment. The plea taken by the assessee is that the incentive bonus is an allowance specially granted to compensate him for the expenses incurred by him in the

performance of his duties. It is, therefore, claimed that the genuine expenditure should be deducted from the income chargeable to tax.

(41) Shri A.K. Mittal, learned counsel for the assessee, has argued that the salary of a Development Officer of the LIC is liable to be reduced if he did not conform to the prescribed norms regarding insurance business secured by him and the amount of premium earned for the LIC, while it is not so in other services. Higher Incentive Bonus becomes payable to a Development Officer on achieving higher insurance business. A Development Officer can show better performance on visiting the customers. It would naturally mean that he will have to incur certain necessary expenses.

(42) Shri Mittal has also argued that under Section 2(24)(iiia) of the Act, any special allowance or benefit was assessable as income but at the same time. Section 10(14) allowed exemption of such allowance or benefit to the extent to which expenses are actually incurred by the employee for that purpose.

(43) It would be relevant to read Section 2(24)(iiia) and also Section 10(14) of the Act :—

2. Definitions.

(24) Income includes :—

xxx xxx xxx

(iiia) any special allowance or benefit, other than perquisite included under sub-clause (iii), specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit;

10. Income not included in total income :

xxx xxx xxx

(14) any special allowance or benefit, not being in the nature of an entertainment allowance or other 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, to the extent to which such expenses are actually incurred for that purpose."

(44) A conjoint reading of the aforesaid two provisions would make it clear that any special allowance or benefit granted to an employee has been made assessable as his income. At the same time, exemption has been allowed in respect of such special allowance or benefit to the extent to which the employee has actually incurred expenses wholly, necessarily and exclusively for the performance of his duties.

(45) In the case of a Development Officer, the Incentive Bonus does not appear to be a special allowance payable to him for meeting expenses wholly, necessarily and exclusively incurred by him in the performance of his duties. In the Incentive Bonus Scheme of 1978, there is no mention that Incentive Bonus is payable so as to meet the expenses incurred by the Development Officers in the performance of their duties. They have been made eligible to receive Incentive Bonus on the number of policies procured by them and the total amount of premium collected during a year. It is also relatable to the territory in which they are required to function for the promotion of insurance business. Thus, there is nothing to show from the Scheme framed by the LIC in 1978 that Incentive Bonus was paid to the Development Officers as any special allowance or benefit granted to them to meet certain expenses.

(46) It is also to be noticed that Section 10(14) has been amended with effect from April 1, 1989, and only such special allowance or benefit has been made eligible for exemption as is notified by the Central Government. It would be, thus, apparent that, after the amendment effective from April 1, 1989, no exemption in respect of actual expenses incurred by the employee receiving a special allowance or benefit would be available unless it has been notified by the Central Government.

(47) It is seen that deductions have been separately specified in Section 16 for the purposes of computing the income under the head "salaries'. As noticed earlier, deduction was allowed, prior to the amendment effective from April 1, 1975, under five specific heads, namely (i) expenditure on the purchase of books, (ii) expenditure in entertaining people connected with the employer's business, (iii) expenditure on conveyance used by the employee for the purpose of his employment, (iv) expenditure actually incurred by the employee which, by the conditions of his service, he was required to

spend out of his remuneration wholly, necessarily and exclusively in the performance of his duties, and (v) amount of tax on professions, trades, callings or employment levied under any State or provincial Act. It would, thus, be obvious that, prior to the amendment effective from April 1, 1975, deductions were allowed from salary under specific heads. Thus, the statute took sufficient care about the need for deduction in respect of a salaried employee. In this light, a second deduction is not permissible.

(48) In a tax statute, it cannot be assumed that the concept of business expediency may be taken into consideration while allowing deductions to arrive at the net profit. If it was a case of profits and gains of business or profession, the concept of net profit would emerge. However, in the case of income by way of salary, deduction shall be allowed only as specified in Section 16 of the Act.

(49) After the amendment effective from April 1, 1975, standard deduction at a fixed rate/amount is allowed under clause (i) of Section 16. Two other deductions, one in respect of entertainment allowance and the other on account of payment of tax on employment are also allowed under clauses (ii) and (iii) of Section 16. Though in clause (i) of Section 16, no specific item has been mentioned for which standard deduction is allowed, it would be necessary to look to the provisions which existed prior to the amendment and which became effective from the assessment year 1975-76. Specific deductions in respect of the purchase of the books, conveyance and in connection with the performance of duties have been done away with and instead a fixed deduction has been made allowable under clause (i) of Section 16. In this light, a second deduction cannot be said to be permissible with the aid of Section 10(14) of the Act.

(50) There is also no element or component of reimbursement of expenses in the grant of Incentive Bonus. The Incentive Bonus Scheme of 1978 is totally silent in this regard. In the absence of any provision in the Incentive Bonus Scheme, no presumption can be raised to the effect that Incentive Bonus was granted by way of special allowance to meet certain specific expenses or by way of partial reimbursement. No assumption or inference would arise unless it was specifically laid down in the relevant Scheme providing for payment of Incentive Bonus. The exclusion of Incentive Bonus from annual remuneration would also not help the assessee inasmuch as this was done only for the purpose of calculation of the amount of Incentive Bonus. The amount of Incentive Bonus

depended on the total expenditure incurred on a Development Officer during a year and the amount of premium collected by him during that year. If in the first year, the premium earned by a Development Officer is in excess of five times the total expenses incurred on him by LIC, Incentive Bonus was payable @ 6 per cent of such income. Similarly, the rate of Incentive Bonus differed depending upon the amount of premium earned by a Development Officer in a year. It is, thus, manifest that in the entire Incentive Bonus Scheme framed by the LIC in 1978, there is no mention of any component of any expenditure in the amount of Incentive Bonus nor Incentive Bonus is to be calculated on the basis of expenditure.

(51) In the matter of tax, the statute is to be interpreted strictly. A provision has to be construed keeping in view the purpose and object for which it is enacted. The concept of commercial principles or business practice would not be relevant unless it is found to be inevitable. Deduction under Section 16 is actually meant to meet various expenses incurred by an employee in the course of his employment. Provisions of Section 16 as in force prior to the amendment effective from April 1, 1975 permitted deductions under five different heads/clauses. Out of those five heads, two items, namely, (i) expenditure incurred in entertaining people connected with the employer's business and (ii) amount of tax on profession, etc., still exist with modifications in clauses (ii) and (iii) of Section 16. The remaining three items of deductions, namely (i) expenditure on the purchase of books; (ii) expenditure on conveyance, and (iii) expenditure incurred by the employee wholly, necessarily and exclusively in the performance of his duties, do not any more exist and instead standard deduction at a fixed percentage/amount is allowed under clause (i) of Section 16. When an employee is allowed deduction under clause (i) of Section 16, he cannot claim a second deduction on the ground of having incurred certain expenditure in the performance of his duties.

(52) The assessee has not been able to show that he was not paid any travelling allowance while going to the field in connection with the insurance business. He cannot claim second reimbursement from the amount of Incentive Bonus. He, being an employee of LIC, is entitled to the allowances and benefits in respect of his duties as admissible to other employees.

(53) On a consideration of the entire controversy, it is held that Incentive Bonus is assessable under the head 'salaries' and not under the head 'profits and gains of business or profession,' It

is further held that deduction under section 16(i) of the Act is admissible under the head 'salaries' and no separate deduction on account of expenditures is permissible.

(54) In the result, the question is answered in favour of the Revenue and against the assessee.

S.C.K.

Before N.K. Agrawal, J.

INCOME TAX OFFICER, KAITHAL,—*Petitioner*

versus

ACHHPAL SINGH,—*Respondent*

Crl. M.No. 9059-M of 1991

The 9th Oct., 1998

Income Tax Act, 1961—Ss. 250, 254, 271, 273, 273-A and 279—Penalty imposed on assessee for concealment of income—Assessee filing appeal u/s 254—Commissioner reducing penalty—Prosecution of assessee for concealment of income.

Held, that this was not a case where the assessee filed any application before the Commissioner, seeking reduction or waiver of the amount of penalty imposed upon him by the Assessing Officer. The assessee had, on the other hand, filed an appeal which was heard by the Appellate Assistant Commissioner and the order was passed under Section 250 of the Act. In this view of the matter, sub section (1A) of Section 279 is not attracted at all inasmuch as it was not a case of reduction or waiver of the amount of penalty by the Commissioner in exercise of his power under Section 273A of the Act.

(Para 13)

R.P. Sawhney, Senior Advocate with Mr. Rajesh Bindal, Advocate, for the Petitioners.

Nemo for the Respondent.

ORDER

N.K. Agarwal, J.

(1) A Criminal complaint was filed in the Court of Chief Judicial Magistrate, Kurukshetra, by R.K. Kuchhal, Income-tax