

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "B" BENCH, AHMEDABAD**

**[Coram: Pramod Kumar AM and Rajpal Yadav JM]**

ITA Nos. 2141 & 2142/Ahd/2014  
Assessment Year: 2007-08 & 2009-10

**Shri Punit Dinesh Bhatt** .....**Appellant**  
*30, Daulat Society,  
Near Utkarsh School,  
Gadpura Village, RC Circle  
Baroda-390 007  
[PAN : AAPPB 0841 C]*

**Vs.**

**Dy. Commissioner of Income-tax** .....**Respondent**  
*Circle – 7,  
Baroda*

**Appearances by:**

**Bhavin Marfatia** *for the appellant*  
**Mudit Nagpal** *for the respondent*

Date of concluding the hearing : 25.10.2017

Date of pronouncing the order : 27.10.2017

**O R D E R**

**Per Pramod Kumar AM:**

1. By way of these two appeals, the assessee appellant has challenged the correctness of the separate order of even dated 07.05.2014 passed by the CIT(A)-V, Baroda in the matter of assessment under Section 143(3) r.w.s. 147 of the Income-tax Act, 1961, for the assessment years 2007-08 and 2009-10.

2. The grievances raised by the assessee in both the assessment years are as follows:-

**"AY 2007-08**

- 1. The learned Commissioner of Income Tax (Appeals) -V, Baroda ["the CIT(A)"] erred in fact and in law in confirming the action of Deputy Commissioner of Income Tax, Circle-7, Baroda ("the AO") in making a disallowance of deduction claimed amounting to Rs. 4,55,897/- being 30% of the amount of incentive bonus.*
- 2. The learned CIT(A) erred in fact and in law in confirming the action of AO in holding that entire amount of Rs. 4,55,897/- is taxable.*
- 3. The learned CIT(A) erred in fact and in law in confirming the action of AO in charging interest u/s 234B of the Income Tax Act, 1961.*

4. *The learned CIT(A) erred in fact and in law in confirming the action of AO in initiating penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961.*

AY 2009-10

1. *The learned Commissioner of Income Tax (Appeals)-V, Baroda ["the CIT(A)"] erred in fact and in law in confirming the action of Deputy Commissioner of Income Tax, Circle-7, Baroda ("the AO") in making a disallowance of deduction claimed amounting to Rs. 3,04,492/- being 30% of the amount of incentive bonus.*
2. *The learned CIT(A) erred in fact and in law in confirming the action of AO in holding that entire amount of Rs. 3,04,492/- is taxable.*
3. *The learned CIT(A) erred in fact and in law in confirming the action of AO in charging interest u/s 234B of the Income Tax Act, 1961.*
4. *The learned CIT(A) erred in fact and in law in confirming the action of AO in initiating penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961."*

3. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

4. Learned representatives fairly agree that the above grievances in both assessment years under consideration are covered, in favour of the assessee, by the decision dated 24.10.2017 of the Co-ordinate Bench of this Tribunal in a group cases (Shri Narendrasinh D Vala & 4 others) for the assessment years 2006-07 to 2008-09, wherein the Tribunal has, inter alia, observed as follows:-

*"6. We have heard rival contentions and perused the records placed before us. Sole grievance in all these set of appeals is against the disallowance of expenses claimed by the assessee against the incentive bonus received from LIC of India for working as a Development Officer. From the perusal of the decision of co-ordinate bench in the case of Shri Dharmendrasinh G. Gohil (supra), we find that very same issue of disallowance of expense against incentive bonus received from LIC came up before the tribunal and issue was decided in the favour of assessee observing as follows:*

*"8. We now come to assessee's second substantive ground challenging correctness of disallowance of expenses claimed of Rs. 2,34,145/- from his incentive bonus. There is no dispute that the LIC has issued a clarification way back w.e.f. 01.04.1989 entitling Development Officers for reimbursement to the extent of 30% of the incentive bonus granted to them. Hon'ble jurisdictional high court's former judgment also caps the same @30%. Learned Departmental Representative vehemently contends that the assessee's expenditure in question is much less than the one in hand. Mr. Popat strongly rebut the same by referring to assessee's reply dated 30.12.2013 at page 6 of assessment order claiming the actual expenditure to be much more than the one in question. We find that the same has nowhere been*

*controverted in assessment order. The Revenue's argument regarding quantification stands rejected.*

*9. We proceed further to notice that hon'ble jurisdictional high court's two decisions go contrary to hon'ble Madhya Pradesh high court's judgment as well as similar other precedents. The Revenue vehemently contends that hon'ble apex court's decision (supra) makes it very clear that hon 'ble jurisdictional high court's judgment in case of Kiranbhai H Shelat (supra) is wrong. There is no dispute about this factual position. It however emerges that hon'ble jurisdictional high court's latter decision in Nithinbhai's case (supra) takes due note thereof in allowing assessee's identical claim once again at page 4. We thus assume that their lordships have very well considered hon 'ble apex court's decision before arriving at the very conclusion in assessee 's favour. We accordingly allow assessee 's claim of expenses in question of Rs.2.34,145/- against his incentive bonus received from LIC. This second substantive ground therefore succeeds in all three appeals as we have already clarified that there is no distinction except that of the relevant figures involved therein. "*

*6.1 We further find that in another decision of tribunal in case of Shri Narendrasinh D. Vala (supra) co-ordinate bench deleted the impugned disallowance relating to expenses claimed for earning incentive bonus by observing as follows;*

*"3. We advert to first common issues in all these appeals relating to validity of reopening. Both these assesseees are admittedly employed as Development Officers in the Life Insurance Corporation of India. They had claimed the above expenses coming to 30% of the incentive bonus received from the above corporation alongwith conveyance allowances. The Assessing Officer initiated reopening in their cases on the ground that hon 'ble apex court's decision in Gurudev Singh Jaggi vs. CIT SLP (Civil) No. 22350 of 2003 decided on 17.11.2003 (arising from hon'ble U.P. high court's decision in ITA No.56/2000 dated 09.05.2003) had observed that hon'ble jurisdictional high court's decisions in CIT vs. Kiranbhai PI She I at (1999) 235 ITR 635 (Guj) was wrong. He thereafter framed impugned consequential re-assessment on 27.01.2015 in former assessee 's case and on 30.01.2015 in latter assessee 's cases: respectively. The C1T(A) upholds the same in his orders under challenge except to the extent (hat he has restricted conveyance expenditure disallowance (supra) to 50%.*

*4. Both the learned representatives refer to the case file containing a co-ordinate bench order in latter assessee base for assessment years 2006-07 to 2008-09 ITA Nos. 2771 to 2773/Ahd/2014 decided on 19,05.2017 inter alia upholding validity of reopening based on hon'ble apex court's decision hereinabove. It quotes hon'ble apex court's yet another judgment in Raymond Woollen Mills Ltd. vs. ITO (1999) 236 ITR 34 (SC) settling the law that a reopening can be resorted to on the basis of a mere prima facie material wherein its correctness and sufficiency is not to be considered at threshold stage. There is no*

*distinction on facts being pointed out at either party's behest. We therefore uphold the reopening (s) under challenge in all four cases.*

*5. We now advert to the second issue of allow ability of expenditure against incentive bonus received from the Life Insurance Corporation of India. Learned Departmental Representative places a very strong reliance on hon'ble apex court's decision (supra). We however notice that the above co-ordinate bench has quoted hon 'ble jurisdictional high court's decision in CIT vs. Nitinbhai T Bhupatani Tax Appeal No. 1005/2005 decided on 08.02.2006 i.e. post facto hon'ble apex court's decision. It has accordingly accepted assessee 's claim after referring to hon 'ble jurisdictional high court's latter judgment. There is no other distinction on facts coming from the Revenue side apart from the above legal plea. We therefore follow consistency in view of LIC's clarification w.e.f. 01.04.1989 entitling its development officers for reimbursement to the extent of 30%. We accordingly direct the Assessing Officer to delete the impugned disallowance in all four instances before us. "*

*6.2 From perusal of the above decisions of the tribunal, we find that the facts involved in the instant appeals are similar to the facts adjudicated by the tribunal in the decision referred above. We, therefore, respectfully following the decisions of co-ordinate bench, delete the impugned disallowance made by the Assessing Officer. Thus, the orders of both the lower authorities are set aside and the impugned disallowance is deleted."*

5. We see no reason to take any other view of the matter than the view so taken by the co-ordinate bench. Respectfully following the same, we uphold the grievances of the assessee and allow both appeals filed by the assessee for AYs 2007-08 and 2009-10.

6. In the result, the appeals are allowed. Pronounced in the open court today on the 27<sup>th</sup> day of October, 2017.

Sd/-

**Rajpal Yadav**  
(Judicial Member)

**Ahmedabad, the 27<sup>th</sup> day of October, 2017**

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Copies to: (1) The appellant  
(2) The respondent  
(3) Commissioner  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

Sd/-

**Pramod Kumar**  
(Accountant Member)

By order

TRUE COPY

Assistant Registrar  
Income Tax Appellate Tribunal  
Ahmedabad benches, Ahmedabad