

CASE NO.:
Appeal (civil) 3167 of 1997

PETITIONER:
THE SECRETARY, CENTRAL BOARD OF DIRECT TAXES & ORS.

Vs.

RESPONDENT:
B. SHYAM SUNDAR

DATE OF JUDGMENT: 29/08/2001

BENCH:
S.P. Bharucha, Y.K. Sabharwal & Ashok Bhan

JUDGMENT:

Y.K.SABHARWAL, J.

The Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India announced a scheme to be operational from 1st April, 1985 for grant of reward to officers and staff of the Income Tax Department. The scheme postulated the grant of reward under four heads as follows :

- 2(a) Reward for disposal under Summary Assessment Scheme
- 2(b) Reward for scrutiny Wards
- 2(c) Reward for search and seizure work
- 2(d) Reward for best officers at Tribunal.

The scheme sets out the quantum of reward, stage of its payment and persons entitled to receive the award amount. It further stipulates that all cases of grant of reward would be examined and approved by competent committees which were constituted. Rule 7 of the scheme, inter alia, provides that the reward shall be payable to the Government servants upto the level of Assistant Commissioner of Income Tax depending on the contribution made by them as a team as well as individually with regard to collection of intelligence, surveillance, effecting seizures and framing of assessments etc. and due credit will be given to the staff employed in investigation and/or prosecution work resulting in conviction of persons involved. It further provides that the competent committee will decide the manner in which the reward due will be shared between the eligible officers and staff and that the reward will be purely an ex-gratia payment and the competent committee's discretion shall be final.

The respondent as an assessing officer completed the assessment of an assessee M/s. Anand Samrat Company, Secunderabad for the assessment year 1983-84 by passing assessment order dated 26/27th March, 1986 under Section 143(3) of the Income Tax Act, 1961. In respect of this

assessee and its partners, a search had been carried out in July 1982 resulting in seizure of assets and number of incriminating documents. It seems that after analyzing the seized material and details gathered by the Intelligence Wing, an appraisal report was prepared by the Assistant Director of Inspection (Investigation) and it was forwarded to the assessing officer along with the seized material. On 6th May, 1985 a return was filed by the assessee for the year 1983-84 which was the year relevant for the search action. The respondent completed the assessment. The total additional income brought to tax after giving effect to the order of the Income Tax Appellate Tribunal was over Rs.12,00,000/-. According to the appellants, the additions made in the assessment order were based on either the seized material or the report given by the Investigation Wing. In reply to his claim for reward, the respondent was informed in terms of communication dated 6th April, 1995 that his claim had been considered and he was not found fit for grant of reward under Rule 2(b) of the Reward Scheme, 1985. This was challenged by the respondent by filing before the Central Administrative Tribunal, Hyderabad an application under Section 14 of the Administrative Tribunal Act, 1985. According to the respondent all the conditions laid down in the scheme had been satisfied for grant of reward to him under Rule 2(b) of the Reward Scheme, 1985 and denial thereof to him was illegal and arbitrary.

The stand of the appellants before the Tribunal was that payment under the scheme was purely ex-gratia and the discretion of the Committee deciding the matter was final and could not be questioned. On merits, it was submitted that the respondent was not entitled to the grant of the reward under the scheme as the assessment was made on the basis of documents and material seized in the search operation by a team of officers and that was dealt with in Rule 2(c) of the scheme and also that no contribution was made by the respondent. The respondent was not a member of the team which had conducted search and seizure operation. The Tribunal, by order under challenge, allowed the application of the respondent and directed the appellants to grant him the award as prayed by the respondent in accordance with the scales prescribed by the department under the scheme.

The objection that the discretion of the Committee that the respondent was not entitled to the reward under the scheme could not be challenged before the Tribunal, was rejected by the Tribunal holding that the reward was part and parcel of service condition of an employee and it was a 'remuneration' which formed part of service matter and, therefore, the employee had right to challenge it. We may note that the learned counsel for the respondent frankly conceded that the claim of the respondent for the reward under the scheme does not fall under Rule 2(c). Admittedly, the respondent was not a member of the team which had conducted the search. Counsel, however, contends that the claim of the respondent clearly falls under Rule 2(b) and as all the conditions thereunder had been satisfied, the Tribunal rightly allowed the application of the respondent. We do not agree. It has not been shown to us how the discretion of the Committee can be said to be illegal and arbitrary. It seems that the assessment was made on the basis of seized material and appraisal report of the Investigation Wing and that the Committee, whose discretion was final, was of the opinion that there was no

contribution made by the respondent and he was not found fit for grant of reward under Rule 2(b). Undoubtedly, the case came before the respondent as assessing officer after search and seizure operation and if on these facts, the Committee decided that the respondent is not entitled to the grant of reward, the discretion of the Committee cannot be faulted. Clearly, the Tribunal's decision is wholly unsustainable. Even on the question of jurisdiction it seems that the matter was outside the purview of the Tribunal. Under Section 14 of the Administrative Tribunal Act, 1985, the Tribunal has jurisdiction, power and authority in relation to 'service matters'. 'Service matters' include remuneration (including allowances), pension and other retirement benefits. The reward amount was purely ex-gratia payment. It is difficult to treat it as a condition of service. Further it is difficult to comprehend how such ex-gratia payment can be treated as remuneration of the kind postulated by the Act. But in view of our decision on merits, we do not consider it necessary to examine this aspect in depth.

In view of aforesaid conclusions and also bearing in mind the submission of learned Solicitor General that probably the scheme was withdrawn long back, we refrain from commenting on the scheme which grants payment to Government servants for doing their duty. For the foregoing reasons, we set aside the order of the Tribunal and allow the appeal with costs.

.....J.
(S.P. Bharucha)

.....J.
(Y.K. Sabharwal)

.....J.
(Ashok Bhan)

August 29, 2001.