IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, PUNE

SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI PARTHA SARATHI CHAUDHURY, JM

ITA No. 472/PUN/2022 : Assessment Year : 2018-19

Mahadev Vasant Dhangekar

Appellant

Vs.

The Asstt. CIT, NFAC, Delhi Respondent

Appellant by : Shri Akshay Chhajed & Shri Rupesh Munawat
Respondent by : Shri Ramnath P. Murkunde

Date of Hearing : 24-03-2023
Date of Pronouncement : 03-04-2023

ORDER

PER SHRI PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the National Faceless Appeal Centre (NFAC), Delhi, dated 23-11-2021 for the Assessment year 2017-18 on the following grounds of appeal.

"Each of the grounds and/ or sub-grounds of the appeal are independent and without prejudice to the others. .

Ground No.1:

on the facts and in the circumstances of the case and in law, the order of the learned Commissioner of Income Tax (Appeals) is perverse in as much as it does not consider the ratios laid down in the case laws of the Income Tax Appellate Tribunal, Mumbai and that of the Apex court against the doctrine of 'stare decisis

The Appellant prays that the addition of Rs. 42,21,154/-be deleted.

Ground No.2:

On the facts and in the circumstances of the case and in law, the order of the learned Commissioner of Income Tax (Appeals) is perverse inasmuch as it violates the principles of natural justice by not providing any justification on case relied by appellant during the course of the hearing and hence the Appellant was given no opportunity to rebut or distinguish the same:

The Appellant prays that the addition of Rs. 42,21,154/-be deleted.

Ground No.3:

Without prejudice to ground nO.1 above, the facts and in the circumstances of the case, the Ld. Assessing Officer have erred in holding that the amount of Rs.42,21, 154/- received by the assessee could be treated as income under the charging section or under the section dealing with the computation of income of the assessee

The Appellant prays that the addition of Rs.42,21, 154/- be deleted.

Ground No.4:

Without prejudice to ground nO.1 & 2 above, on the facts and circumstances of the case and in low the learned Commissioner of Income Tax (Appeals) is erred on holding that the payment mode voluntarily by on employer out of his own sweet will and not conditioned by any legal duty or legal obligation, whether on sympathetic reasons or otherwise is assessable to tax under the Income Tax Act, 1961 disregarding the fact that the receipt was capitol receipt and there is no provision to tax such receipt.

The Appellant prays that the addition of Rs.42,21, 154/- be deleted.

Ground No.5

Without prejudice the above grounds the appellant ought to be given relief u/s 89 of the Income Tax Act, 1961 with respect to the amount received by the appellant.

The Appellant prays that the, the appellant ought to given relief u/s 89 of the Act

Ground No.6

On the facts and in the circumstances of the case, the Ld. AO has erred in initiating penalty proceedings under section 270A of the Act. It is prayed that the Ld. AO be directed to drop the penalty proceedings.

GENERAL:

The Appellant craves leave to odd, to amend, to alter and/ or to delete all or any of the above grounds of appeal."

2. The brief facts in this case are that the assessee has taken voluntary retirement from Racold Thermo Private Limited Pune during the year under consideration. Thereafter the assessee has started trading business of Industrial consumable supply in the name of M/s. Laxmi Enterprises. The assessee received Rs. 47,21,154/- from the company as Ex-Gratia and from this amount claimed Rs. 5,00,000/- u/s 10(10C) VRS compensation/Termination of service and balance remaining amount of Rs. 42,21,154 from Ex-Gratia taken as capital receipt.

3. In this regard, the A.O observed as under:

> *"In this connection, the Ex-Gratia payment is not fully exempt u/s 10(1OC) and balance payment of Rs. 42,21,151/- to be construed as profit in lieu of salary thus to be added in the taxable income of the assesse u/s 17(3)(iii). The provisions of section 17(3)(iii) of the Act are clear that any amount due to or received, whether in lumsum or: otherwise, "by any assessee from any person- after cessation of his employment with that person is liable to be treated as profit in lieu of salary. The definition of terminal compensation as per Act is the amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the cessation of his employment or the modification of the terms and conditions relating thereto is regarded as profits in lieu of salary. The cessation may be due to retirement, premature termination, resignation or otherwise. It is not disputed that the amount received is compensation and it was received by the assessee from his employer in connection with the cessation of employment by resigning from his job. The condition prescribed under section 17(3)(iii) of the Act are fully satisfied to be treated as salary. All other payments made by an employer to an employee would be brought under the head "Profit in lieu of salary". This is a comprehensive provision by virtue of which all payments made by an employer to an employee whether made in pursuance of a legal obligation or voluntarily are brought under profit in lieu of salary*."

4. A show cause notice was issued in this regard to the assessee and the assessee submitted his reply which was considered by the A.O. It was observed and held as under:

> *"2.4 The reply submitted by the assessee is duly considered and it is not acceptable as the claim of assessee that this amount was received in appreciation of long and loyal service rendered and that it was casual and non-recurring receipt and hence exempt under the Act. I disagree with the assessee's contention. The letter of the employer dated 16.02.2021, referred to above that ex gratia of Rs. 42,21,154/- was paid voluntarily and this payment was made by them out of their own sweet will as an appreciation to him for his quality of integrity and commitment in performance of his duties for the entire tenure of his service with the company. In my view this amount is taxable amount, camouflaged as ex-gratia, to benefit the assessee. Secondly the employer deducted tax even in respect of ex-gratia payment. It is therefore; concluded that the ex gratia payment paid to the' assessee was for the services rendered by the assessee and could not be treated as casual payment. Thus the ex-gratia payment of Rs. 42,21,154/- brought to tax by treating this additional compensation received by assessee from his employer as " Profits in lieu of Salary" under section 17(3)(iii) of Income Tax Act, 1961 as it is a well settled proposition of law that payment made by former employer for post loyal services is profits in lieu of salary liable to be taxed as such."*

5. When the matter went upto the NFAC, it upheld the findings of the A.O by observing that the employer had deducted the TDS on the said amount of payment made. Further, the amount of Rs. 42,21,154/- was included in the salary as per Form No. 16 submitted by the assessee. The NFAC also observed that the letter submitted by the assessee that the payment received was voluntarily given by the employer had been issued to the assessee only after the case was taken up for scrutiny and notices u/s 143(2) and 143(1)

were issued to the assessee. If the employer intended to treat the payment as voluntary 'ex-gratia' payment given out of sweet will as an appreciation of the employer the same letter would have been given at the time of voluntary retirement of the employee and no TDS would have been deducted on the said payment and also the payment would not have been included in form No. 16 given to the assessee by the employer. Further also, the letter was signed by Vice President (Human Resources) whereas Form No. 16 had been signed by the Asstt. General Manager of the company. Accordingly, the amount of Rs. 42,21,154/-was brought within the purview of taxation u/s 17(3)(iii) of the Income-tax Act, 1961 (hereinafter referred to as the "Act").

6. We have heard the rival submissions, considered relevant materials/documents on record, analysed the facts and circumstances in this case. The assessee had received Rs. 47,21,154/- from his erstwhile company as ex-gratia and from this amount claimed Rs. 5,00,000/- u/s 10(10C) VRS compensation/termination of Service and balance remaining amount of Rs. 47,21,154/- from ex-gratia taken as capital receipt. The ld. A.O taxed the amount u/s 17(3)(iii) of the Act by treating it as additional compensation received by the assessee from his employer as profit in lieu of salary u/s 17(3)(iii) of the Act. Section 17(3)(iii) of the Act provides as follows:

"17. For the purposes of sections 15 and 16 of this section

(1) - - - - - - - -

(3) "profits in lieu of salary" includes

- - - - - - - - -

(iii) any amount due to or received, whether in lump sum or otherwise, by any assessee from any person

(A) before his joining any employment with that person or
(B) after cessation of his employment with that person.

Therefore, as per the aforesaid provision, it is clearly evident that any payment received whether in lump sum or otherwise by an assessee from any person after cessation of his employment with that person is also considered as profit in lieu of salary and is to be brought to tax accordingly being defined inclusively as per the Act. The ld. A.O has invoked this provision and has brought to tax the disputed amount. The NFAC while upholding the addition has discussed that the amount received by the assessee is part and parcel of Form No. 16 issued to him and that the TDS has also been paid in respect of the said amount and that further the letter which was produced by the assessee was signed by Vice President (Human Resources) only surfaced once the scrutiny started and notices u/s 143(2) and 143(1) were issued to the assessee. On the other hand, it is contended by the assessee that the payment has been made voluntarily by the employer out of his own sweet will and not bound by any or condition by any legal duty or legal obligations which are on sympathetic reason or otherwise. Further, neither the terms of employment nor the service rules of the employer company provides for making ex-gratia payment. Thus, the said amount is totally voluntary and it is not compensation.

7. Admittedly, the amount was received by the assessee after cessation of his employment with the employer company. In the normal course, section 17(3)(iii) of the Act would apply and the payment would be covered within the definition of profit in lieu of salary as brought out by the department. However, in this case, the letter which has been issued by the employer clearly stated that the payment of the amount has been made voluntarily to the assessee and is not the compensation. This letter has not been doubted by the department. Neither, the ld. A.O nor the NFAC conducted any independent inquiry regarding the veracity of this letter and none of the authorities have held this letter issued by the employer to the assessee as bogus. Without establishing the letter as non-genuine or without examining the sanctity of the payment made simply

invoking the provisions of the Act for making addition is not appropriate for a quasi-judicial authority. The revenue should have verified and examined the genuineness of the letter which was produced by the assessee wherein the employer had stated that it is a voluntary payment made as per appreciation for the employee without entering into this exercise simply invoking the provision of the Act is not legally tenable and takes the colour of arbitrariness. The ld. D.R could not produce any documents/evidences on record to show that the payment received from the employer nor voluntary in nature or that the payment was coupled with some legal obligation on the part of the employer to pay to the employee. No such facts were produced before us. We are of the considered view, therefore, in this case, when the employer itself stated that the payment has been made voluntarily by them out of appreciation for the employee thus falls outside the rigours of section 17(3)(iii) of the Act. In view thereof, we set aside the order of the NFAC and direct the ld. A.O to delete the addition from the hands of the assessee. The grounds of appeal of the assessee are allowed.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on this 3rd day of April 2023.

Sd/-	sd/-
(R.S. SYAL)	**(PARTHA SARATHI CHAUDHURY)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Pune; Dated, the 3rd day of April 2023.
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The NFAC Delhi
4. Pr. CIT concerned.
5. The D.R. ITAT 'A' Bench Pune.
5. Guard File

BY ORDER,

/// TRUE COPY ///

Sr. Private Secretary
ITAT, Pune.

		Date	
1	Draft dictated on	24-03-2023	Sr.PS/PS
2	Draft placed before author	27-03-2023	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	03-04-2023	Sr.PS/PS
7	Date of uploading of order	03-04-2023	Sr.PS/PS
8	File sent to Bench Clerk	03-04-2023	Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		