

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER

ITA No.3046/Mum/2016
(Assessment Year 2011-12)

Shripal S. Shah,
2, Nellsagar, Narayan Pujari Nagar,
A.G.Khan Road, Worli,
Mumbai 400 001
PAN: BBTPS8152C

..... Appellant

Vs.

The Income Tax Officer,
Ward 18(1)(1),
Mumbai

.... Respondent

Appellant by : Shri Nishit Gandhi
Respondent by : Ms Beena Santosh

Date of hearing : 07/12/2016
Date of pronouncement : 09/12/2016

ORDER

The captioned appeal filed by the assessee pertaining to assessment year 2011-12 is directed against an order passed by CIT(A)-33, Mumbai dated 01/02/2016, which in turn, arises out of an order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 26/03/2014.

2. In this appeal the solitary grievance of the assessee is against the action of the income tax authorities in treating a sum of Rs.16,01,172/- as assessable in the hands of the assessee as salary income.

3. In brief, the relevant facts are that the assessee individual is a director of M/s. Aryaman Financial Services Limited, a public limited company under the Companies Act, 1956 (hereinafter called as the 'company'). In the course of assessment proceedings the Assessing Officer noted that during the year under consideration, assessee had received a sum of Rs.16,09,472/- from the company between the period from 21/06/2010 to 21/03/2011 and then the amount was reversed. In the assessment order, it is noted by the Assessing Officer that on being show-caused, the representative of the assessee submitted that the amounts were received towards salary, but since the company did not have adequate profits, such payments were reversed on 21/03/2011. The Assessing Officer noted that out of the total amount of Rs.16,09,472/-, a sum of Rs.8,300/- was an expense incurred on behalf of the company and a sum of Rs.23,622/- was payment received towards telephone. The Assessing Officer excluded the sum of Rs.8,300/- and treated the sum of Rs.23,622/- as perquisite under section 17(2)(iv) of the Act and the balance Rs.15,77,550/- as salary. Thus, sums of Rs.15,77,550/- and Rs.23,672/-, totalling to Rs.16,01,172/- was assessed under the head salary. In coming to such conclusion, the Assessing Officer observed that it is a case where initially the payments were received as salary and later on surrendered or foregone and, therefore, the same was, in any, case taxable as salaries. The CIT(A) has also affirmed the stand of the Assessing Officer on the ground that the salary foregone or surrendered on a later date is still liable to be taxed under the head 'salary'. Against such a decision of the CIT(A), assessee is in further appeal before the Tribunal.

4. Before the Tribunal, the Ld. Representative for the assessee vehemently argued that the amounts were actually in the nature of temporary advances

from the company and were not in the nature of salaries. It has been pointed out that no TDS was deducted by the company at the time of payment and, therefore, neither the company nor the assessee has considered it to be as salary, whereas it is a case of pure temporary loan which have been refunded. Apart there from, the Ld. Representative for the assessee pointed out that there was inadequacy of profits in the hands of the company and, therefore, on that score also there was no justification to infer that the amounts were disbursed by the company as salaries. In this context, reference has been made to the copy of the Audited accounts, the copies placed at pages 73 to 92 of the Paper Book and also to the relevant provisions of the Companies Act, 1956 dealing with the managerial remuneration to the Directors, etc.

4.1 At the time of hearing, it has been pointed out that in the last year also, similar payments were made by the company to the assessee, but the Assessing Officer has not considered it as salaries and referred to the bank statement in this regard, copy of which is placed at pages 54 of the Paper Book. In sum and substance, the plea of the assessee is that the characterization of the impugned amount has been understood by the company and the assessee as a temporary loan/advance and the same cannot be tinkered with by the Assessing Officer without any cogent reason and evidence.

5. On the other hand, Ld. Departmental Representative has vehemently pointed out that it is a case where the salary previously received has been foregone or surrendered and, therefore, the same has been rightly taxed by the lower authorities.

6. I have carefully considered the rival submissions. Factually speaking, the only point which prevailed with the Assessing Officer to consider the impugned sum as salary in the hands of the assessee was the explanation rendered by the representative of the assessee in the course of assessment proceedings. The same has been noted by the Assessing Officer in para – 6 of the assessment order. Quite clearly, the representative of the assessee did say that the *'amount received was the salary provision to the assessee director'*. So however, it was also represented before the Assessing Officer that the payments have been reversed on account of inadequacy of profits with the company. Be that as it may, if one has to look at the payments dehors the said explanation available to the Assessing Officer, no other feature is present which could justify the characterization of the said amount as salary. Firstly, the payments have been made on varying dates between 21/06/2010 to 21/03/2011. Secondly, even the amounts vary and the payments have not been subject to any tax deduction at source, which would normally be the position if the payments were in the nature of salary. Thirdly, there is no material to suggest that any Board of Director's resolution was available permitting the company to pay salary to the assessee -director. In fact, before the CIT(A) assessee referred to a resolution passed in the meeting of the Board of Directors of the company dated 25/04/2011, which approved the salary payment to the assessee-director for the financial year 2011-12, which corresponds to the next assessment year. In this manner, assessee sought to point out that so far as instant year is concerned, there is no resolution of the Board of directors of the company authorizing the payment of salary to the assessee-director. The aforesaid explanation of the assessee has been unjustly

brushed-aside by the CIT(A). At the time of hearing, Ld. Representative for the assessee explained that no doubt, the representative of the assessee had furnished an explanation, but the same was not correct and in any case, the said explanation was based on any fact position. In my considered opinion, the Assessing Officer has been overtly influenced by the explanation of the representative of the assessee without appreciating attendant facts, which clearly show that the impugned amount could not be construed as payment of salaries by the company to the assessee-director. Therefore, having regard to the facts and circumstance of the case, in my view, the income tax authorities have erred in adding a sum of Rs.16,01,172/- to the income of the assessee as salary. Therefore, I set-aside the order of the CIT(A) and Assessing Officer is directed to delete the addition.

7. In the result, appeal of the assessee is allowed, as above.

Order pronounced in the open court on 09/12/2016

Sd/-
(G.S.PANNU)
ACCOCUNTANT MEMBER

Mumbai, Dated 09/12/2016

Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai