INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 486/Del/2016 (Assessment Year: 2008-09)
ITA No. 487/Del/2016 (Assessment Year: 2009-10)
ITA No. 488/Del/2016 (Assessment Year: 2010-11)

Smt. Mahindro Devi, H. No.318-1, Sector-8, Urban Estate, Karnal, PAN: ANMPD0223H **(Appellant)**	Vs.	AO, Ward-2, Aayakar Bhawan, Sector-12, Karnal **(Respondent)**

Assessee by :	Sh. J. S. Sharma, Adv
Revenue by:	Sh. Ravi Jain, CIT DR Sh. K. K. Jaiswal, DR
Date of Hearing	17/03/2016
Date of pronouncement	16/05/2016

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. These are the three appeals filed by the assessee against the order of the ld CIT (A), Karnal dated 15.11.2015 for the Assessment Year 2008-09, 2009-10 and 2010-11.

2. The only issue involved in all these three appeals are whether the amount received by the assessee as legal hirer as per Rule 5 of the Haryana Compassionate Assistance to the Dependent of the Deceased Govt. Employee Rule 2006 as monthly compensation chargeable to tax or not.

3. The assessee has raised identical grounds in all the Assessment Years. Therefore for brevity grounds of Ay 2008-09 are reproduced as under:-

"1. That the Ld. CIT (Appeals) has erred in confirming the assessment made by the Assessing Officer.

2. That the Ld. CIT (Appeal) has grossly erred confirming the addition of income of capital nature.

v) Income received by the appellant (widow of deceased person who died while in Govt service) as Monthly" Financial Assistance" from Govt of Haryana.

vi) The payment made to the appellant for the maintenance of family is voluntarily paid by the Govt. under the rules made by the state Govt.

vii) That such income/receipts are not income u/s 2(24).

viii) That such income/receipts are not salary/perquisites u/s 15/17 of IT Act."

4. The brief facts of the case are that assessee is a widow of late Shri Balbir Singh who passed away while in service of Haryana Govt. as lecturer. The appellant received monthly financial assistance for maintenance of her family as per rules framed by the Haryana State Govt. Appellant's contention is that the sum received by the assessee as financial assistance is receipt exempt from taxation in view of circular No. 573 dated 21st August 1999. Originally assessee filed her return of income on 28.07.2008 showing income of Rs. 598030/- and claimed deduction u/s 80C of the Income Tax Act of Rs. 1 lac. Subsequently, she revised her total income by revised return filed on 23.03.2010 wherein she declared income of Rs. 12,000/- only. The reason for revision was that she received assistance income of Rs. 6968030/- during the year which was claimed as not chargeable to tax. Subsequently, based on the revised return, notice u/s 148 was issued on 13.02.2013 and assessee filed detailed objection that were disposed by the Assessing Officer. In response to the notice, the assessee filed a letter dated 10.10.2013 requesting to accept the return filed on 23.03.2010 as return filed in response to notice u/s 148 of the Act. Ld Assessing Officer framed order u/s 143(3) read with section 147 of the Income Tax Act making an addition of Rs. 698030/- on account of assistance and granted a deduction of Rs. 15000/- u/s 57(ii)(a) of the Act. The issue was agitated before ld CIT (A) on the issue of reopening as well as on merits. Ld CIT (A) dismissed the appeal of the assessee on the issue of reopening and on the issue of merit he rejected the contention of the assessee that the receipt is not chargeable to tax by circular No. 573 dated 21st August 1990 as that circular deals only with the lump sum payment. Further, the ld CIT(A) was of the view that as Haryana Govt. treated the same amount as chargeable to tax by deducting tax at source it is not an exempt receipt.. Therefore, he dismissed the appeal of the assessee on both the counts. Assessee preferred an appeal before us for these years, however, on merits only.

5. Ld AR of appellant submitted a detailed written submission mainly relying on the financial assistance scheme of Haryana Govt., Circular No. 573 and the decision of the coordinate bench of in cased of DCIT Vs. Laxmi M Aiyar 2436/Mum/2009, He contended that such financial assistance received by the assessee is exempt from tax. He

further stated that deduction of tax at source made by the payer cannot determine the taxability of income in the hands of the recipient.

6. Ld DR submitted that ld Assessing Officer as well as the ld CIT(A) are correct in holding and confirming the taxability of the above amount as the circular stated does not deal with monthly payment received but only lump sum payments. Further, as Haryana Govt. has already deducted tax there on therefore it is chargeable to tax. He vehemently supported the orders of lower authorities.

7. We have carefully considered the rival contentions. Assessee is in receipt of financial assistance on death of her husband Late Shri Balbir Singh under the Scheme of Haryana Compassionate Assistance on dependents of deceased Govt. Employee Rules, 2006. According to that Rule the object is to assist the family of the deceased govt. employee Group C and Group D category, which helps such families in tiding over the emergent situation resulting from the loss of bread earner while in regular service by giving financial assistance. According to Rule 5 of the Income Tax Rules on death of the Govt. employee, his family will continue to receive financial assistance of a sum equal to the pay and other allowances last drawn by the employee in the normal course for specified time. According to Rule 8 the families will have the option to opt for ex gratia grant provided in Rule 2003 or 2005 in view of the monthly financial assistance under the scheme. In terms of this scheme, the assessee was granted the financial assistance vide order dated 13th July 2007 of Higher Education Commissioner, Haryana (Chandigarh). The claim of the assessee that vide circular No. 573 the income is stated by CBDT as exempt. The Circular No. 573 is as under:-

> ***"CIRCULAR NO. 573 DATED 21ST AUGUST, 1990***
>
> ***Taxability of lump sum payment made gratuitously or by way of compensation or otherwise to widow/other legal heir of an employee—Regarding***
>
> *Clarifications have been sought from the CBDT whether a lump sum payment made gratuitously or by way of compensation or otherwise to the widow or other legal heirs of an employee, who dies while still in active service, is taxable as income under the IT Act, 1961.*
>
> ***2.*** *The issue has been examined by the Board and it is clarified that any such lump sum payment will not be taxable as income under the aforesaid Act."*
>
> *SOURCE : [Reported in (1990) 86 CTR (St) 49 : (1990) 185 ITR (St) 31]*

8. According to that circular a clarification has been sought from CBDT whether a lump sum payment is chargeable to tax or not and CBDT replied that such lump sum payment is not chargeable to tax. Lower authorities refused to give assessee the benefit of this circular as it related to lump sum payment where as the assessee received monthly payments. We have perused the definition of ' income' u/s 2(24) of the Income Tax Act which includes several receipts and on reading of various clauses relating to receipts chargeable to tax as income, we do not find any distinction of lump sum payment or periodic payment drawn therein under any of the clauses. Further, the periodicity of payment cannot determine the taxability of the same. It is the true nature of that payment which decides its taxability. Therefore, we do not agree with the views of lower authorities that only lump sum payment received are not chargeable to tax. The appellant has relied on the decision of Hon'ble Supreme Court of India in case of Padmraje R. Kadambande Vs. CIT 195 ITR 877 (SC) where it has been held that it is the quality of the payment that is decisive of the character of payment and not the method of the payment or its measure, it fall within capital or revenue.

9. Further Coordinate bench of ITAT in DCIT Vs. Laxmi M Aiyar (supra) has held that the periodicity of the payment does not make the payment chargeable to tax. The issue before the bench was whether the income received annually as wife of deceased partner is revenue receipt chargeable to tax or it is a capital receipt. Coordinate bench has held as under:-

> *"3. Facts of the case are that the assessee received a sum of Rs. 20,26,444/- from M/s. K.S. Aiyar & Co., which was claimed as capital receipt and hence not offered for taxation. The facts leading to the receipt of this sum are that the assessee is widow of Late Shri Mani Arjun Aiyer, who before his death was senior Partner of M/s. K.S. Aiyer & Co. As per partnership deed executed on 9.9.1992, the widow of the deceased partner was entitled to receive specified amount on retirement or death of partner of the firm. As per the terms and conditions of the partnership deed on the Mrs. Lakshmi M. Aiyar death of Shri Mani Arjun Aiyer, his widow or his estate was to be paid at the rate of 5% p.a. of the gross receipts of the firm for a period of 10 years or till the end of the accounting year next following. Accordingly, after the death of Shri Mani Arjun Aiyer, the assessee received the payment from the firm and claimed in the return of income as capital receipt. On being show caused as to why the said sum be not charged to tax, the assessee relied on the decision of CIT vs. Mrs. Jaya Bhaskaran 168 ITR 256 (Pat.) and submitted that the aforesaid case squarely applies to the facts of her case. The Assessing Officer after considering explanation tendered on behalf of the assessee observed that the facts of Mrs. Jaya Bhaskaran's case (supra) were entirely different from the facts of the present case. It was noticed that in the case of Mrs. Jaya Bhaskaran (supra), the payment was made in lieu of exercise of right to nominate on the death of the partner, the eldest surviving child, whereas in the case of the assessee, it was an assurance to the partners in order to get their attention to the affairs of the firm by ensuring continuous support to their widows*

on their death for a period of 10 years. The Assessing Officer also considered Circular No.573 dated 29.8.1990 relied by the assessee in support of her case but observed that the said Circular was not applicable to the assessee's case. Resultantly the amount received by the assessee was held to be taxable as revenue receipt.

4. On being aggrieved the assessee carried the matter before the learned CIT(A). It was submitted before the learned CIT(A) that the amount received by the assessee was not related to any business done or loss of profits and it was not recompense for service, past or future and the payment did not bear the character of income. In support of the contention that the amount in question was capital receipt, the assessee relied on the decision of P.H. Divecha vs. CIT (48 ITR 222)(SC). It was also submitted before the learned CIT(A) that the decision in the case of CIT vs. Mrs. Jaya Bhaskaran squarely applied to the assessee's case as payment made therein was by the same firm M/s. K.S. Aiyer & Co. to the widow of another partner. The ld. CIT(A), after considering the object and purpose of payment made in the case of the present assessee vis-à-vis that in the other case noticed that in Mrs. Lakshmi M. Aiyar the case of the assessee, the firm had given assurance to the partners in order to get their attention to the affairs of the firm by ensuring continued support to their widows on their death for a period of 10 years and in the case of Mrs. Jaya Bhaskaran, it was in lieu of the right by the eldest surviving child to nominate any qualified person as partner. He held that in the case of the assessee as well as Mrs. Jaya Bhaskaran, payments were received not relating to any business done or to loss of profits and it was not for any compensation for services rendered by the assessee either individually or likely to be rendered in future. Thus, the payment in the hands of the recipient was held to be not bearing any revenue character. Accordingly he held that the payments received by the assessee was in the nature of capital and not assessable to tax and allowed the appeal of the assessee and deleted the addition made by the Assessing Officer.

5. Being aggrieved the Revenue carried the matter in appeal before the Tribunal. The learned Departmental Representative strongly supported the order passed by the Assessing Officer and submitted that the case relied upon by the assessee in CIT vs. Mrs. Jaya Bhaskaran (supra) was not applicable to facts of the present case. He argued that the Assessing Officer had rightly distinguished the facts of the present case with those of Mrs. Jaya Bhaskaran (supra) and rightly held that the payments received by the assessee was not capital receipt.

6. On the other hand the learned Counsel for the assessee strongly supported the decision in the case of Mrs. Jaya Bhaskaran supra. He submitted that the said decision clearly applied to the assessee's case. He further submitted that the object of the payment made to the assessee was an assurance given to the assessee which is same as in the case of Mrs. Jaya Bhaskaran where the eldest surviving child was to be nominated as partner i.e. it was an the assurance given to the partners to support their legal heirs in future. He further submitted that in the case of P.H. Divecha vs. CIT 48 ITR 222 (SC) also the payment made to that assessee also did not relate to any business or to loss of profits, which has been held to be not taxable.

7. We have heard both the rival parties and perused the material available on record. The only issue involved in this appeal is whether the amount received by the assessee, after the death of her husband from the firm M/s. K.S. Aiyer & Co., in which he was a partner, is a capital or revenue receipt. According to the assessee the amount received is in the nature of capital receipt because she has received these payments unrelating to any business or loss of profits and further it was not a recompense for service, past or future. Further, the assessee has relied

on the decision of Mrs. Jaya Bhaskaran (supra). According to the Assessing Officer the payment received by the assessee is revenue in nature because according to the partnership deed clause 9(1)(b), payment under this clause shall be for full and final settlement of Shri Mani Arjun Aiyer including the user of his share of goodwill, tenancy rights, capital assets and all his other claims in the firm in respect of his past connection with the firm. The learned CIT(A) considered the entire factual matrix of the case of Mrs. Jaya Bhaskaran (supra) and P.H. Divecha supra and held that the decision in the case of Mrs. Jaya Bhaskaran squarely applies to assessee's case and as such the payment received by the assessee could not be charged to tax. Under similar circumstances when some other partner of the firm died and the compensation was paid by the firm, the Revenue sought to tax the same. The Hon'ble Patna High Court in that case of CIT vs. Mrs. Jaya Bhaskaran (supra) upheld the tribunal order by holding that the receipt was not taxable in the hands of the widow of the deceased. In holding so, reliance was also placed on the decision in the case of P.H. Divecha Vs. CIT (supra) wherein the Hon'ble Supreme Court. In the said case of Mrs. Jaya Bhaskaran, the tribunal while deciding the issue following the case of P.H. Divecha (supra) has noted that the Hon'ble Supreme Court observed that

> *"in determining whether this payment amounts to a return for loss of a capital asset or is income, profits or gains liable to income-tax, one must have regard to the nature and quality of the payment. If the payment was not received to compensate for a loss of profits of business, the receipt in the hands of the appellant cannot properly be described as income, profits or gains as commonly understood. To constitute income, profits or gains, there must be a source from which the particular receipt has arisen, and a connection must exist between the quality of the receipt and the source. If the payment is by another person, it must be found out why that payment has been made. It is not the motive of the person who pays that is relevant. More relevance attaches to the nature of the receipt in the hands of the person who receives it though in trying to find out the quality of the receipt one may have to examine the motive out of which the payment was made……..The periodicity of the payment does not make the payment a recurring income because periodicity may be the result of convenience and not necessarily the result of the establishment of a source expected to be productive over a certain period."*

8. In the instant case it is quite manifest from the facts of the case that the payment made to the assessee did not relate to any business done by her for the firm. In the like manner it was not to compensate the assessee for any loss of profits suffered by her because of the firm. It was also not a compensation for any services rendered by her either in present or in future. The assessee was neither the principal holder of the partnership firm nor had invested any capital nor had rendered any service to the firm. At the same time, it is palpable that it was her deceased husband, who was partner in the firm, on whose death, the firm paid the said amount to the assessee. It is further important to bear in mind that it was not a one-time payment. Rather it continued to be paid by the firm to the assessee over the period as per the terms of the partnership deed. As the payment was towards the recognition of the valued services rendered by the partner during his life time and it was a sort of relief to the distressed family, and that too as per the terms of the partnership deed, it could not be said to have a revenue character in her hands. Therefore, in our considered opinion the payment received by the assessee did not bear the receipt in the nature of revenue income. It cannot be taxed in the hands of the assessee. The principle laid down by the decision in CIT vs. Mrs. Jaya Bhaskaran(supra) following the decision of Hon'ble Supreme Court

in the case of P.H. Divecha (supra), squarely applies to the assessee's case. The analogy can be drawn from the Circular No. 573, F.No.200/115/90-IT(A-I) dated 21.8.1990, as per which a lump sum ex-gratia payment made to the widow or other legal heirs of an employee, who dies while still in active service, is not taxable as income under the Income tax Act, 1961. The very spirit of the circular, that when any payment is made to the legal heir to support them in hardship and ensure livelihood, it cannot be taxed, coincides with the ratio of the aforenoted judgment in the case of P.H. Divecha (supra). In the case of Padmaraje Rs. Kadambande Vs. CIT, [1992] 195 ITR 877, the Hon'ble Supreme Court held as under:-

> *"In such of those cases falling under cl. (d) of the proviso to s. 15(1) of the 1955 Act, no statutory right is created. This is unlike those cases falling under cls. (i), (ii) and (iii) of sub-s. (1) of s. 15. The fact that the assessee has applied for a grant for maintenance nor again, the periodicity of payment, would be conclusive. Neither the nomenclature nor the periodicity of the payment would be determinative factors. Regard must be had only to the nature and quality of the payment. The marginal heading of s. 15 is "compensation". The fact that, under cls. (i), (ii) and (iii) of s. 15(1), the compensation is paid as of right and in cases falling under cl. (d) of the proviso, it is a discretionary payment, would not stamp the payment with the character of revenue. The payment made by the Government is undoubtedly voluntary. However, it has no origin in what might be called a real source of income. No doubt s. 15(1), proviso, cl. (d) enables the applicant to seek payment but that is far from saying that it is a source. Therefore, it cannot afford any foundation for such a source. Further, it is a compassionate payment for such length of period as the Government may, in its discretion, order. Hence, the amounts received by the assessee during the financial years in question have to be regarded as capital receipts and, therefore, are not income within the meaning of s. 2(24)."*

10. In view of the above judgments of the Hon'ble Supreme Court and also the judgment of the Hon'ble Patna High Court in the case of Jaya Bhaskaran (supra), taking into consideration of the facts of the present case, we uphold the order of CIT(A) in holding that the amount in question received by assessee cannot be charged to tax as the same are in capital receipt."

10. We do not see any material difference between the financial assistance received by the assessee in the appeal before us as well as the receipt in question before coordinate bench in the above-cited case. Therefore following the decision of the coordinate bench and supported by the CBDT circular No. 573 dated 21.08.1980, we are of the view that financial assistance received by the assessee is a capital receipt and not chargeable to tax. Therefore we reverse the finding of the ld CIT (A) and allow appeal of the assessee in ITA No. 486/Del/2016 for AY 2008-09.

11. ITA No. 487/Del/2016 (Assessment Year: 2009-10) and ITA No. 488/Del/2016 (Assessment Year: 2010-11) are also on the same issue of taxability of the financial assistance received by the assessee under the same scheme for these years. In view of our decision in appeal of the assessee for AY 2008-09, where in para No. 10 above we have

held that the financial assistance received by the assessee is not chargeable to tax, similarly we also hold that in these appeals for AY 2009-10 and 2010-11 the receipt of financial assistance is not chargeable to tax.

12. In the result, all above three appeals of the assessee are allowed.

Order pronounced in the open court on 16/05/2016.

-Sd/-	**-Sd/-**
(DIVA SINGH)	**(PRASHANT MAHARISHI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 16/05/2016
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi