

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA
BEFORE SHRI A.T.VARKEY, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.649/Kol/2016

(निर्धारण वर्ष /Assessment Year:2009-2010)

Hari Shankar Modi 24 Madan Mohan Tolla Street, Kolkata-700005	Vs.	ITO Ward 7(1) Aayakar Bhawan, P-7, Chowringhee Square, Kolkata
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AELPM0041G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by : Shri Bishnu Kant Agarwal
Revenue by : Shri Rajat Kr. Kureel, JCIT

सुनवाई की तारीख / Date of Hearing : 30/12/2016

घोषणा की तारीख/Date of Pronouncement 04/01/2017

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Assessee, pertaining to assessment year 2009-10, is directed against the order passed by the Id. Commissioner of Income Tax (Appeals)-16, Kolkata, in Appeal No.406/CIT(A)-16/Kol/2014-15/W-7(1), dated 09.02.2016, which in turn arises out of assessment order passed u/s.143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 29.09.2011.

2. Brief facts of the case qua the assessee are that the assessee filed return of income on 24.09.2009 declaring total income of Rs.11,39,230/-. The assessee's case was selected for scrutiny U/s 143(3) of the Act and Assessing Officer completed the assessment by making addition of medical insurance receipt of Rs.2,41,767/-. The assessee had received a sum of Rs.2,41,767/-as reimbursement of expenses incurred in relation to a surgery of gall bladder by New India Insurance Company under medical insurance policy. Assessing officer observed that the amount of insurance

receipt of Rs.2,41, 767/- on account of medical, is an income U/s 2(24) of the Income Tax Act and since no express exemption is granted under any provisions of the Act therefore, it is chargeable to tax.

3. Aggrieved from the order of the Assessing Officer, the assessee filed an appeal before the Id. Commissioner of Income Tax, who has confirmed the order of the Assessing Officer observing the followings:

“3.I have gone through the provisions of section 80D and section 10D.Provision has been made for deduction in respect of health insurance premium. There is nothing in the provision of section 10D to help the assessee how reimbursement from insurance company is not taxable.

4. Hence, the addition of the A.O. is sustained and the appeal of the assessee is dismissed.”

4. Not being satisfied with the order of the Id.CIT(A), the assessee is in further appeal before us and has taken the following grounds of appeal:

“1.THAT on the facts and in the circumstances of the case AND in law, the Id CIT(A) erred in confirming the order of the Learned Income Tax Officer.

2.THAT on the basis of the facts of the case and in law, the learned Income Tax officer erred in treating reimbursement of Medical Expenses under medical insurance policy as income chargeable to tax and making an addition of Rs.2,41,767/- on account of the said reimbursement.”

4.1 Ld. AR for the assessee has submitted that Assessing Officer wrongly treated reimbursement of medical expenses under the medical insurance policy as income chargeable to tax. Reimbursement of expenses cannot take a character of income. Section 2(24) of the I.T. Act defines the term “Income” in an inclusive way, but reimbursement of expenses cannot be income because the assessee is getting the money back, which he already spent. Assessee did not earn this money at all which he is getting as reimbursement. Reimbursement does not mean that the assessee is

deriving any income from any sale of goods and services. There is no motive to earn income out of medical insurance.

4.2 On the other hand, the Ld DR for the Revenue has primarily relied on the stand taken by the Assessing Officer, which we have already noted in our earlier para, and the same is not being repeated for the sake of brevity.

4.3 Having Heard the rival submissions, perused the material available on record, we are of the view that there is merit in the submissions of the assessee, as the propositions canvassed by the Id.AR for the assessee are supported by the facts narrated by him above. As the Id AR pointed out that reimbursement does not mean that the assessee is deriving any income from any sale of goods and services. What the assessee spent, is getting back by way of reimbursement, is not an income. The term "income" has been defined by Law dictionary as follows:

The Black's Law Dictionary defines the income as "The money or other form of payment that one receives, usually periodically, from employment, business, investments, royalties, gifts and the like."

Punjab & Haryana High Court in the case of Sat Pal and Co. V/s Excise and Taxation Commissioner 185 ITR 375 [1990] defined the 'income' as follows:

"The Income-Tax Act defines the expression 'income' in clause 24 of section 2, but that definition can not be read back into entry 82 of List 1 of the Seventh Schedule to the Constitution. Even the said definition is an inclusive one and has been expanding from time to time. Several items have been brought within the definition from time to time by various amending Acts. The said definition cannot, therefore, be read as exhaustive of the meaning of the expression income occurring in entry 82 of list 1 in the Seventh Schedule. This, of course, does not mean that an amount which can, by no stretch of imagination, be called income can be treated as income and taxed as such by parliament. It must have some characteristics of income as broadly understood. So long as the amount taxed as income can rationally be called income as generally understood, it is competent for the Parliament to call it income and levy tax thereon. (Section 44AC and 206C)"

After going through the definition of the income, as explained above, one can say easily that the “reimbursement” is not an income. The term “reimbursement” does not fall in the characteristics of income. No doubt the definition of ‘income’ is inclusive. This, of course, does not mean that an amount which can, by no stretch of imagination, be called income can be treated as income and taxed as such by parliament. It must have some characteristics of income as broadly understood.

Based on the above analysis of the term ‘income’, we are of the view that addition made by Assessing Officer and confirmed by Id.CIT(A) needs to be deleted. Accordingly, we delete the addition.

5. In the result, appeal of the Assessee is allowed.

Order pronounced in the open court on this 04/01/2017.

Sd/-
(A.T.VARKEY)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 04/01/2017

प्रकाश मिश्रा/Prakash Mishra,नि.स/ PS

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- Hari Shankar Modi
2. प्रत्यर्थी / The Respondent.-ITO Ward-7(1), Kolkata
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, कोलकाता / ITAT, कोलकाता