

आयकर अपीलीय अधिकरण, C/'SMC' न्यायपीठ, चेन्नई ।

IN THE INCOME TAX APPELLATE TRIBUNAL
C/"SMC" BENCH, CHENNAI

श्री. चंद्र पूजारी लेखा सदस्य, के समक्ष ।

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.2757/Mds./2016

(निर्धारण वर्ष / Assessment Year : 2008-09)

Mr.K.Padmanaban,
Flat No.C, Block-5,
Jains Kences Retreat, No.15, Reddy
street, Virugambakkam,
Chennai 600 092.
PAN ADPPP 0522 L

Vs. Income Tax Officer,
Salary Ward –V(3),
Chennai.

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by

: None

प्रत्यर्थी की ओर से/Respondent by

: Mr.V.Sreenivasan, JICIT, D.R

सुनवाई की तारीख/ Date of hearing

: 19.06.2017

घोषणा की तारीख /Date of Pronouncement

: 19.06.2017

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal is filed by the Assessee, aggrieved by the order of the Learned Commissioner of Income Tax(A)-5, Chennai dated 14.07.2016 pertaining to assessment year 2008-09.

2. The assessee has raised the following grounds for consideration.

1. The learned Commissioner of Income tax (Appeals) ought to have appreciated the fact that the assessee on account of his employment as an Engineer in Ships has to incur a lot of expenditure on victuals, Holiday Travel, Academics and Research, Special expenditure, Uniform purchase, Uniform Washing, conveyance, Medical treatments in foreign countries, etc.

2. The learned Commissioner of Income tax (Appeals) ought to have appreciated the fact that ship management is aware that an employee has to spend from his sources on these types of expenses and even more and hence are allowing these expenses even without production of bills and vouchers.

3. The learned Commissioner of Income tax (Appeals) ought to have appreciated the fact that these allowances which have no element of savings imbedded in them will qualify for exemption under section 10(14) in whole or in part whether the assessee produces bills or not.

4. The learned Commissioner of Income tax (Appeals) ought to have appreciated the fact that the assessee could not produce bills and vouchers for the reason that in international ports and foreign locations no bills and vouchers are given since payments are being made by way of credit cards and many other forms of payments otherwise than by way of cash.

5. The learned Commissioner of Income tax (Appeals) ought to have appreciated the fact that expenses by their very descriptions indicate their official usage and in appreciation of the fact the Commissioner of Income tax (Appeals) ought to have allowed the expenses in full or at least a reasonable percentage as relating to the profession of the assessee.

3. The facts of the case are that assessee is a salary employee and claimed deduction in his return of income u/s.10 of the Act. The AO found from Form No.16 issued by M/s.International Seaport Dredging Ltd., that the gross salary is ₹9,74,365/- and also net salary

was ₹9,74,365/- and the assessee claimed all the allowances given by the employer as exemption u/s.10 of the Act as follows.

Sl. No.	ALLOWANCE	Claimed assessee exempt amount Rs.	Allowance given by employer. But not allowed as exempt in Form 16. Amount Rs.
1	Vitualling allowance	26,244	26,244
2	Holiday travel allowance	87,475	87,475
3	Academic & Research	65,605	65,605
4	Special allowance	2,50,180	2,50,180
5	Uniform making allowance	57,734	57,734
6	Uniform washing allowance	38,490	38,490
7	Conveyance	9,600	19,245
8	Medical	19,245	19,245
	Total exemption claimed	5,54,573	5,64,218

The AO disallowed the same on the following reasons.

3.a. I) Regarding Uniform allowance, he had stated that the uniform and washing expenditure were incurred while the assessee was exclusively on duty and the proof for the same is now not available with the assessee as the assessee is not maintaining regular book of account to keep evidence.

3.b. Reason for disallowance: The assessee contention is not acceptable as the allowance is given for incurring expenditure on purchase and maintenance of uniform for performing duty. If the

same was furnished before the employer the same would have been allowed (the extent of bills produced), by the employer. Since the employer has not allowed the allowance as exempt and the assessee has not furnished the evidence for incurring expenditure even now, Uniform Making Allowance of Rs.57,734, Uniform washing allowance of Rs.38,490 are disallowed and added to his net returned income as income under head Salary (54734 +38490) for A.Y.2008-09.

3.c. II) Regarding Academic research allowance he had stated that the allowance was paid by the employer to upgrade the technical knowledge while the assessee was off board. The assessee had incurred expenditure and spent for courses offered by various Marine instate at Mumbai and Chennai. The proof for the said expenditure is not available now as the assessee is not maintaining regular book of account to keep evidence.

3.d. Reason for disallowance: The assessee contention is not acceptable as the allowance is given for incurring expenditure on Academic research. It is clear from the work contract issued by employer, in Para 3 under head Training and Para 3.1. it is stated as: "Tuition and for examination fees for attending courses at recognized institutions for obtaining certificates under the STCW 95 convention will be reimbursed by the Employer two years after successful completion of the courses and production of the certificates and original receipts to tuition fees paid as proof thereof."

If the assessee had furnished the proof before the employer the same would have been allowed as exempt u/s 10 by the employer in form 16. Since the employer has not allowed the allowance as exempt and the assessee has not furnished the evidence for incurring expenditure even now (he could have furnished at least evidence of course certificates if any in proof of his claim, which he has failed to do so) the same is disallowed now and added to his net returned income as income under head Salary for A.Y.2008-09 of ₹75,985/-

3.e. (III) Regarding Victualling allowance: He had stated that the expenditure is nothing but food expenditure while on duty. The assessee had spent food expenditure while he was on duty. There is no proof available for the same.

3.f. Reason for disallowance: The assessee himself has stated that he has no proof for the expenditure. It is clear from the work contract issued by employer, in Para 12.1 under head Food, Accommodation, beddings and Amenities it is stated as:

“The Employer shall provide food, accommodation, bedding and other amenities as per standards, regulations and Employers policy.”

It has not stated that the employee (assessee) has to pay for the same. The employer has not allowed as exempted the same u/s 10 in form 16. Also allowance given for food expenditure is not an exemptible allowance. Hence the same is disallowed now and added

to his net returned income as income under head salary for A.Y 2008-09 of Rs. 30,394/-.

3.g. IV) Regarding Special Allowance. He had stated that the allowance (2,50,180) are granted to meet employee's personal expenses, such allowance are granted by the employer to remunerate the employee or to compensate him for performing duties of special nature.

3.h. Reason for disallowance/restricted: Under Rule 2BB The prescribed allowance for the purpose of clause (14) of Section 10 any allowance granted to an employee working in any transport system to meet his personal expenditure during his duty performed will be 70 per cent of such allowance up to a maximum of Rs.6,000/- p.m. 70 % of allowance is ₹1,75,126 (250180 * 70%). Hence as the assessee is working in ship a sum of ₹72,000 (6000 * 12) is allowed and the excess claim is disallowed now and added to his net returned income as income under head Salary for A.Y.2008-09 of (250180 -72000) ₹1,78,180.

3.1 V) Regarding Holiday Travel allowance, the assessee representative had filed a letter on 31/01/2014 stating that the holiday travelling allowance is nothing but the allowance paid for the expenses incurred to join and leave ship to meet the ordinary daily

charges incurred by an employee on account of absence from his normal place of duty.

3.J. Reason for disallowance: The assessee's representative's contention is not acceptable as till date he has not furnished any evidence. Also holiday travel allowance(LTA) is allowed only for employee and his family in connection with his proceeding on leave to any place in India, for which he has to furnish proof for having incurred the same, as it can be allowed only on actual expenditure incurred. Hence the same is disallowed now and added to his net returned income as income under head Salary for A.Y.2008-09 of ₹1,01,312/-.

3.K. VI) Regarding Conveyance, and Medical allowance the same is allowed as the assessee had claimed conveyance allowance exemption to the extent allowable of ₹9,600/- as against received of ₹19,245 and regarding Medical ₹15,000 is allowed as Medical reimbursement as against received and claimed of Rs.19,245.

Aggrieved with the order of the Id. Assessing Officer, the assessee carried the appeal before the Ld.CIT(A). On appeal, the Ld.CIT(A) confirmed the action of the Id. Assessing Officer. Against the order of the CIT(Appeals), the assessee is in appeal before us.

4. We have heard both the parties and perused the material on record. Similar issue came for consideration before this Tribunal in assessee's own case for assessment year 2009-10 in ITA No.425/Mds./2016 vide order dated 06.05.2016 wherein Tribunal held that:-

"7. We heard the rival submissions, perused the material on record, judicial decisions and written submissions. In the case of employees there is a contractual agreement with employer and reimbursement of expenses are fixed based on terms and conditions of the employment. The assessee is a marine engineer in M/s. International Seaport Dredging Ltd and provided allowances in addition to the basic salary such allowances are mandatorily for upbringing employees to be physically and mentally to be fit to conduct the duty with great responsibility. The Id. Assessing Officer has accepted and referred to the different type of allowances in his assessment order incurred by assessee and due to non-satisfaction of claim for expenditure without any evidence the disallowance are considered in the assessment. The Id. Commissioner of Income Tax (Appeals) relied on the findings of the Assessing Officer and judicial decisions and provisions of Sec. 10(14) of the Act and of the opinion that allowances are to be utilized wholly and exclusively by the employee in conducting his duty and should be actually incurred for the purpose as per the provisions of Sec.10(14) as under:-

(1) Any such special allowance or benefit, not being in the nature of a perquisite within the meaning of clause (2) of section 17, specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit [as may be prescribed] to the extent to which such expenses are actually incurred for that purpose.

(2) Any such allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides or to compensate him for the increased cost of living [as may be prescribed and to the extent as may be prescribed]

[Provided that nothing in sub-clause (ii) shall apply to any allowance in the nature of personal allowance granted to the assessee to remunerate or compensate him for performing duties of a special nature relating to his office or employment unless such allowance is related to the place of his posting or residence]

The Id. Commissioner of Income Tax (Appeals) relied on the judicial decisions and concurred with the findings of Assessing Officer and found as per provisions of Sec. 10(14) it is the duty cast on the assessee that the expenses are actually incurred and to produce the supporting evidence of bills and vouchers. The Id. Assessing Officer has not disputed on the nature of allowance or any adverse claim of expenditure but non availability of supporting vouchers or bills. Considering the apparent facts, provisions of law and the conduct of the assessee in performance of duty, there is a presumption that assessee has incurred the expenditure in discharging the duties but the assessee could not support with any valid explanations for not filing the bills and vouchers. As per the provisions of Section 10(14) of the Act expenses are actually incurred for the purpose of employment and actual spent for the performance of duty. There is a lapse on the part of the assessee for not obtaining valid bills/vouchers for expenses which are to be

submitted to employer or before Assessing Officer in assessment. We apply the benefit of doubt on the claim of expenditure in favour of the assessee by restricting the disallowance by 50% of total allowance received by the assessee and direct the Assessing Officer to restrict the disallowance to 50% of ₹6,07,876/- and pass the order and the appeal of the assessee is partly allowed.

8.In the result, the appeal of the assessee in ITA No.425/Mds/2016 is partly allowed.”

5. In view of this, we direct the AO to disallow only 50% of the above disallowance.

6. In the result, the appeal of assessee is partly allowed.

Order pronounced on 19th June, 2017 at Chennai.

Sd/-
(चंद्र पूजारी)
(CHANDRA POOJARI)
लेखा सदस्य /ACCOUNTANT MEMBER

Chennai,
Dated the 19th June, 2017.

K s sundaram.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |