

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'D' KOLKATA

[Before Hon'ble Shri A.T.Varkey, JM & Shri M.Balaganesh, AM]

ITA Nos.572 & 573/Kol/2016
Assessment Years : **2002-03 & 2003-04**

Shri Surja Sekhar Ganguly Kolkata (PAN: AGDPG 0524 E) (Appellant)	-versus-	I.T.O., Ward-17(3), Kolkata (Respondent)
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For the Appellant: Shri Somnath Ghosh, Advocate
For the Respondent: None

Date of Hearing : 05.06.2017.

Date of Pronouncement : 14.06.2017.

ORDER

PER M.BALAGANESH, AM

1. These appeals of the assessee arise out of the orders of the Learned Commissioner of Income Tax (Appeals) -16 [in short Id CITA] vide Appeal Nos. 29-30/CITA-16/Kol/2014-15/W-53(4) dated 14.1.2016 against the orders of assessment framed by the Learned Income Tax Officer , Ward -17(3), Kolkata (hereinafter referred to as the Id AO) u/s 154 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). As identical issues are involved in both the appeals, they are taken up together and disposed off by this common order for the sake of convenience. The facts of Asst Year 2002-03 are taken up for adjudication and decision rendered thereon would apply with equal force for Asst Year 2003-04 also except with variance in dates and figures.

2. The only issue to be decided in this appeal is as to whether the Id CITA was justified in upholding the action of the Id AO in denying the exemption u/s 10(17A) of the Act to the assessee , in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee, an individual, is an internationally acclaimed chess player representing India in world championships and has earned the distinction of Grand Master from World Chess Federation. The assessee has been winning lot of prizes in the international tournaments as well as in the national circuit. The assessee filed his return of income u/s 139(4) of the Act for the Asst Year 2002-03 on 19.3.2003 disclosing a total income of Rs 56,000/-. In the said return, the assessee claimed exemption u/s 10(17A) of the Act in respect of the following receipts :-

Award / Prize for Championship

11.7.2001	West Bengal Government	1,00,000
31.7.2001	Local for reimbursement of equipment	
	Purchased	7,200
24.9.2001	Asian Individual Chess	2,71,580
4.2.2002	National Award	12,000
14.2.2002	World Champion	2,69,710

		6,60,490

The said return was summarily assessed u/s 143(1) of the Act on 24.9.2003. Later the ld AO issued notice u/s 154 of the Act on 27.9.2004 to withdraw the exemption granted in the sum of Rs 6,60,490/- claimed u/s 10(17A) of the Act and accordingly passed an order on 16.6.2005 withdrawing the exemption as no details for claim of exemption were filed by the assessee before the ld AO. Thereafter the assessee filed a rectification petition u/s 154 of the Act before the ld AO on 31.8.2005 intimating the prize monies received by him together with the details thereon, which was rejected by the ld AO. On appeal, the ld CITA-XIII, Kolkata vide his order in Appeal No. 98/CIT(A)-XIII/ACIT Cir-17/05-06 dated 31.1.2008, remitted the issue to the file of ITA Nos. 572 & 573/Kol/2016 Shr9i Surja Sekhar Ganguly A.Y.2002-03 & 2003-04

the Id AO for verification of the claim of assessee in respect of exemption u/s 10(17A) of the Act as well as deduction u/s 80RR of the Act. The assessee did not appear before the Id AO in the second round of assessment proceedings as he was away from India as he had to participate in his game. The Id AO denied the exemption u/s 10(17A) of the Act in the sum of Rs 1,12,000/- and deduction claimed u/s 80RR of the Act in the sum of Rs 5,41,290/- , vide order u/s 154/251 of the Act dated 17.12.2008 determining the total income at Rs 7,16,590/- . The assessee preferred an appeal against this order before the Id CITA who observed as under:-

3. This appeal is against order u/s 154 passed by the AO. The contention of the A.O. is in pursuance to the order of the Ld. CIT(A)-XIII. The assessee was required to file document in support of his claim of exemption u/s 10(17A) and deduction u/s 80RR, but no such details were filed.

The A.R. filed written submission dt 28.01.2014. Remand report was sent to the A.O. again that one more opportunity may kindly be given to the assessee. The A.O. sent remand report dt. 12.03.2014 , where it was expaliend that despite opportunities givenm, no documents were filed. Hence, it is clear tha the assessee has failed to avail of the opportunities given time and again.

Hence, the appeal of the assessee is dismissed and the addition of the A.O. is confirmed.

4. Aggrieved, the assessee is in appeal before us on the following grounds:-

“1. FOR THAT THE Ld. Commissioner of Income Tax (Appeals)-16, Kolkata was wholly in error in upholding the action of the Ld. Income Tax Officer. Ward 17(3). Kolkata in passing the specious order u/s 154/251 of the Act without complying with the directions contained in the appellate order passed u/s. 251 of the Act dated 31-01-2008 and the purported action taken on that behalf is abinitiovoid. ultra vires and ex-facie null in law.

2. FOR THAT the Ld. Commissioner of Income Tax (Appeals)-16, Kolkata failed to appreciate that the assumption of jurisdiction u/s. 154 of the Act on the intimation passed u/s. 143(1) of the Act dated 29-09-2003 to withdraw the exemption claimed u/s. 10(17A) of the Act was devoid of any legal authority in this respect and the impugned order framed by him is thus opposed to law.

3. FOR THAT the Ld. Commissioner of Income Tax (Appeals)-16, Kolkata erred in 'upholding the purported addition of Rs. 1.12,000/- resorted to by the Ld. Income Tax Officer. Ward 17(3). Kolkata by disallowing the claim of exemption made u/s. 10(17A) of the Act on extraneous parameters not germane to the issue

and the impugned finding on that account is wholly illegal. invalid and infirm in law.

4. FOR THAT on a true and proper interpretation of the scope of the provisions of s. 80RR of the Income Tax Act. 1961. the Ld. Commissioner of Income Tax (Appeals)-16. Kolkata was remiss in upholding the alleged denial of deduction in the amount of Rs. 5.48.489/- made by the Ld. Income Tax Officer Ward 17(3). Kolkata without considering the factual matrix of the instant case and the specious finding on the basis of such wrong assumption is wholly arbitrary. unreasonable and perverse.”

5. The Id AR placed reliance on the Circular issued by the CBDT vide Circular No. 447 dated 22.1.1986 wherein it had been clarified by the CBDT that awards received by an amateur sportsman will not be liable to tax in his / her hands as it would not be in the nature of income. He also fairly stated that this circular has been superseded by another Circular No. 2/2014 dated 20.1.2014 , but the revised circular is effective only from 1.4.2005 and hence is not applicable for the Asst Years 2002-03 and 2003-04 (i.e the years under appeal). The assessee also placed reliance on the decision of the coordinate bench of Delhi Tribunal in the case of Abhinav Bindra vs DCIT reported in (2013) 59 SOT 87 (Delhi-Trib) dated 26.7.2013 wherein the old circular no. 447 dt 22.1.1986 was followed. None appeared for the revenue and even an adjournment petition was not moved by the revenue before us on the date of hearing. Hence we proceed to dispose off the appeal on hearing the Id AR.

6. We have heard the Id AR and perused the materials available on record. We find that the Circular No. 447 dt 22.1.1986 and the decision of Delhi Tribunal apparently supports the case of the assessee. But we are not inclined to accept the same directly as at the outset, we find that the lower authorities had not examined the details of prize monies received by the assessee. The assessee had filed various certificates obtained from Government and other agencies in support of receipt of prize monies and certificate from bank for foreign remittances etc. But there is no finding in the orders of the lower authorities to this effect. First the veracity of these documents are to be examined and a finding in the orders of the lower authorities are required. Hence we deem it fit and appropriate, in the interest of justice and fairplay, to set aside

these appeals to the file of the Id AO, to decide the same afresh, in accordance with law. Needless to mention that the assessee be given reasonable opportunity of being heard. The assessee is also directed to co-operate with the set aside proceedings by submitting the necessary details in support of his contentions before the authorities. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

7. In the result, the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the Court on 14.06.2017.

Sd/-

[A.T.Varkey]
Judicial Member

Sd/-

[M.Balaganesh]
Accountant Member

Dated : 14.06.2017.

[RG PS]

Copy of the order forwarded to:

1. Shri Surja Sekhar Ganguly, C/o S.N.Ghosh & Associates, Advocates, "SEBEN BROTHERS LODGE" P.O.Buroshibtala, P.S.Chinsurah, Dist. Hooghly, Pin-712 105.
2. I.T.O., Ward-17 (3), Kolkata..
3. CIT(A)-16, Kolkata.
4. CIT-18, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches

