

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ C ” BENCH: BANGALORE
**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.2494/Bang/2018
(Assessment Year : 2006-07)

Shri Kushal Sen Gupta, Upohar CondoVille, Tower 10, Flat 1703, Panchasayar, Kolkata-700 094 PAN ALMPS 0771P (Appellant)	Vs.	Income Tax Officer, Ward 1(2), Bangalore. (Respondent)
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Assessee By: Smt. Sheetal, Advocate.
Revenue By: Dr. P. V. Pradeep Kumar, Addl. CIT (D.R)

Date of Hearing :	11.07.2019
Date of Pronouncement :	09.08.2019

ORDER

PER SHRI PAVAN KUMAR GADALE, JM :

The assessee has filed an appeal against the order of learned Commissioner of Income Tax (Appeals)-2, Bangalore passed under Section 143(3) r.w.s. 144 and 250 of the Income Tax Act, 1961.

2. The assessee has raised the following grounds of appeal :

1. On the facts and in the circumstances of the case, the learned CIT(A) ought to have set aside the ex-parte order passed under Section 144 of the Act as opposed to law as there was compliance by the Appellant.
2. On the facts, the learned CIT(A) ought to have refrained from upholding the assessment of Rs.16 lakhs received by the Appellant on compensation as income from other sources without accepting the explanation offered by the Appellant that the amount received was a capital receipt not liable to tax.
3. On the facts, the learned CIT(A) ought to have appreciated that the amount of Rs.16 lakhs received by the Appellant was on account of termination of service prematurely and it was out of Court compromise for settlement and thus the amount received was on account of termination and not for rendering service to justify the income as revenue to be assessed under the head "income from other sources".
4. The learned CIT(A) ought to have appreciated that the compensation was on account of loss of office and accordingly it was a capital receipt not liable to tax.

5. The learned CIT(A) ought to have appreciated that the various cases cited which supported the claim of the Appellant and consequently he ought to have refrained from upholding the addition as made by the assessing officer.
 6. Without prejudice, the addition as confirmed by the learned CIT(A) is arbitrary, excessive and ought to be deleted in full.
 7. For these and such other grounds that may be raised at the time of hearing, the Appellant prays that the appeal may be allowed.
3. The Brief facts of the case are that the assessee has filed the Return of Income on 30.10.2006 declaring total income of Rs.1,51,200 subsequently, the case was selected for scrutiny and Notice under Section 143(2) of the Act was issued whereas the assessee in the Return of Income mentioned that Rs.16 lakhs was received as compensation settlement from Kotak Mahindra Old Life Insurance Co. Ltd. and claimed as exempted income. The assessee was issued show cause notice on 14.11.2008 to submit copy of retainership agreement and compromise agreement and the assessee submitted that he is not in a position to submit the information/details in the assessment proceedings. Whereas the Assessing Officer has passed Best Judgment Assessment under Section 144 of the Act with addition of

Rs.16 lakhs and determined the total income of Rs.17.51,200 and passed assessment order under Section 144 of the Act Dt.17.2.2008. Aggrieved by the order, the assessee filed an appeal with the CIT(Appeals). But the CIT(Appeals) appeal has dismissed the assessee's appeal. Aggrieved by the order of CIT(Appeals), the assessee filed an appeal with the Tribunal.

4. At the time of hearing, the ld. AR submitted that the CIT(Appeals) has erred in confirming the addition and further the compensation received is in the nature of capital receipt as the assessee was terminated from service before the tenure and supported her arguments with Paper Book with evidence of Service Agreement, copy of consent terms and prayed for allowing the assessee's appeal. Contra, the learned Departmental Representative supported the orders of learned CIT(Appeals) and submitted that the contract of the assessee is for 36 months and could not claim the receipt as exempted and prayed for dismissal of the appeal.

5. We heard the rival contentions and perused the material on record. Prima facie, the contention of the learned Authorised Representative that the assessee was employed with Kotak Mahindra Life Insurance Co. Ltd. and as per the Service Agreement, the assessee was engaged as Sales Consultant for distribution of insurance products with annual salary of Rs.12 lakhs. Whereas the assessee has not resigned voluntarily from the

service but the management of the company has unilaterally stopped the payment of salary from 3.3.2003 subsequently the assessee filed winding up the petition in the High Court of Bombay against the company and after negotiations, the assessee company has paid to assessee amount of Rs.16 lakhs. The learned Authorised Representative emphasizing on the terms of Service Agreement in Paper Book pages 6 to 13 and supported stand with judicial decision. Whereas the learned Departmental Representative strongly objected to the submission and mentioning that the decision relied by the Id. AR is not applicable and as the tenure of service is for 13 years and whereas in the present case is less than 3 years. The learned AR demonstrated settlement petition at pages 14 to 16 of the Paper Book where the assessee was paid a sum of Rs.15,10,240 after deduction of TDS Rs.89,760. Considering the material filed by the Id. AR and Assessing Officer made Best Judgment Assessment under Section 144 of the Act and the assessee could not submit the information in the assessment proceedings. We are of the opinion that the matter needs to be examined by the Assessing Officer on the information filed by the assessee. Accordingly to meet the ends of justice, we set aside the order of CIT (Appeals) and restore the entire disputed issue for limited purpose to the file of Assessing Officer to adjudicate afresh and the assessee should be

provided adequate opportunity of hearing and co-operate in submitting the information and allow the grounds of appeal of the assessee for statistical purposes.

6. In the result, the appeal of assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 9th Aug., 2019.

Sd/-

(A.K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 09.08.2019.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore