

आयकर अपील अाधिकरण, अहमदाबाद ढायापीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
"SMC" BENCH, AHMEDABAD

BEFORE, SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And

Ms MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./ITA No.200/AHD/2018

अाधरण वर्ष/Asstt. Year: 2014-2015

Shri Manojkumar Natvarlal Bhatt, 19, Samarpan Housing Society, GIDC, Vadsar Road, Vadodara-390010. PAN: AAOPB2232M	Vs.	Income Tax Officer, Ward-4(1)(4), Vadodara.
--	-----	---

(Applicant)		(Respondent)
--------------------	--	---------------------

Assessee by :	Shri Mukund K. Rao, A.R
Revenue by :	Shri Vinod Tanwani, Sr.DR

सुनवाई का तारख/Date of Hearing : 18/07/2019

घोषणा का तारख /Date of Pronouncement: 08/08/2019

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-4, Vadodara [Ld.CIT(A) in short], dated 12/09/2017 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 05/12/2016 relevant to Assessment Year (AY) 2014-15.

The assessee has raised the following grounds of appeal:

- 1 *The addition made on account of excess claim u/s.10 of the Income Tax Act 1961 of Rs.4,26,247/- be deleted being double addition of the said income.*
- 2 *The addition made on account of excess amount of PRBS claimed of Rs.5,849/- be deleted being double addition of the said amount.*

Without prejudice to the above, appellant reserves its right to make any amendment to the grounds of appeal at the time of hearing.

The interconnected issue raised by the assessee is that the learned CIT (A) erred in confirming the addition made by the AO for 4,32,096 (426247+ 5,849) on account of the contribution made by the employer towards the superannuation fund.

2. The facts of the case are that the assessee in the present case is an individual and drawing his salary from ONGC. The assessee filed his Original return of income for the year under consideration dated 1st October 2014 declaring total income at 13,75,890 which was subsequently revised dated 30th December 2014 declaring total income at 11,64,330.00 only. However, the revised return was not accepted by the Revenue for the reason that there is no provision under the Act to revise the belated return. As such, the assessee in the revised return claimed a deduction of 3,11,560.00 on account of the contribution made by the employer towards the superannuation fund under section 17(2)(vii) of the Act.

2.1 However, the AO found that the employer of the assessee has contributed a sum of 5,32,094.00 towards the superannuation fund in the name of the assessee. The employer in form 16 furnished to the assessee has given a deduction of 1 lakh against the impugned contribution under section 17(2)(vii) of the Act. The AO further noted that the assessee had not shown the amount of the contribution made by his employer towards the

superannuation fund as his income in the income tax return to the tune of rupees 4,32,094.00 (532094-100000) only. Accordingly, the AO made the addition of Rs. 4,32,094.00 to the total income of the assessee.

3. The aggrieved assessee preferred an appeal to the learned CIT (A) who has confirmed the order of the AO by observing as under:

3.3. I have considered the submissions of the learned Authorized Representative and the order of the Assessing Officer, I have carefully considered the order of the Assessing Officer and the submission of the appellant. The first issue is the appellant has claimed exempt income u/s.17(2)(vii) of the Act of Rs.4,32,094/- after claiming basic exemption to the extent of Rs.1,00,000/-. The A.O. observed that the assessee has wrongly claimed the amount received from the employer under PRBS under Chapter-VIA of the Act of Rs.4,26,247/-. In original return of income the assessee has chimed deduction u/s.10 Employer Superannuation Fund directly from gross salary u/s.17(2)(vii) to the tune of Rs.1,00,000/- and also claimed deduction under Chapter VIA of Rs.79,871/- and thereby claimed refund of Rs.63,014/-. But this issue arises from the revised return of income filed by the assessee and claimed deduction u/s. 10 Employer Superannuation fund directly from Gross Salary u/s. 17(2)(vii) of Rs.3,11,560/- for the period from A.Y.2010-11 to 2013-14 and also claimed deduction under Chapter VIA of Rs.79,871/- and thereby claimed refund of Rs.1,28,390/-. But the CPC has not processed the revised return of income as the original return of income was filed after due date for the reason that change of income not allowed in revised return of income by CPC. Further, seen that from the details obtained directly from the employer, it reveals that PRBS amount paid to assessee was Rs.5,32,094 less Rs.1,00,000 as exempt u/s.17(2)(vii) of the Act and balance of Rs.4,32,094/- was taxed. This has done based on the documentary evidence received from employer along with copy of certificate issued by Employer i.e. ONGC with regard to PRBS.

Section 17(2)(vii) perquisites includes "the aggregate of all sums that are comprised in the transferred balance as referred to in sub-rule (2) of rule 11 of Part A of the Fourth Schedule of an employee participating in a recognized provident fund, to the extent to which it is chargeable to tax under sub-rule (4) thereof; " the amount of any contribution to an approved superannuation fund by the employer in respect of the assessee, to the extent it exceeds one lakh rupees is taxable.

Perquisites are benefits provided by the employers in addition to the normal salary at a free of cost or concession rates. Income tax act defines Perquisite as any casual emolument or benefit attached to an office or position in addition to salary or wages. Value of these perquisites is added to the income of employees. Hence Perquisites are taxabic. From the facts and circumstances of the case, it is seen that the assessee has deliberately attempt to take undue advantage by wrong claim which the A.O. has clearly mentioned in the assessment order. Thus, the action of the A.O is upheld and no further inference / is drawn. Thus, the addition of Rs.4,26,247/- is confirmed as excess claim u/s.10 of the I.T. Act.

3.4 Regarding second issue that there was excess amount of PRBS claimed of Rs.5849/-. The A.O. observed from evidence i.e. pay slip and reply from the employer mentioned amount of PRBS at Rs.4,32,094/-. But from the Certificate issued by ONGC the PRBS amount mentioned at Rs.4,26,245/-. Thus, there was difference amount of Rs.5849/- and the same was added to the total income. The action of the A.O, is upheld and accordingly the excess amount of PRBS claimed by the appellant of Rs.5849/- is confirmed.

Being aggrieved by the order of the learned CIT (A) assessee is in appeal before us.

4. The learned AR before us filed a paper book running from pages 1 to 38 and submitted that the amount of contribution made by the employer on behalf of the assessee to the superannuation fund is an amount of rupees 4,32,094 only which has already been offered to tax. The learned AR in support of his claim drew our attention on page 32-38 of the paper book where the copy of the Form 16 issued by the employer was placed.

5. On the other hand, the learned DR before us, apprehends, if the revised return is processed, then the assessee will claim the refund accordingly, though the revised return is not maintainable. The Id. DR vehemently supported the order of the authorities below.

6. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly the employer of the assessee has contributed a sum of Rs. 4,32,094 on behalf of the assessee towards the superannuation fund which is taxable being the part of salary under the provisions of section 17 of the Act for the amount representing over and above the 1 lakh.

In other words the assessee can claim the deduction on account of the contribution made by the employer to the tune of 1 lakh under the provisions of section 17(2)(vii) of the Act. Thus the amount contributed by the employer over and above 1 lakh is subject to tax in the hands of the assessee.

6.1 On perusal of the form 16 issued by the employer, we note that the amount of Rs. 4,32,094.00 has already been shown as income therein which has suffered the tax liability.

6.2 We further note that the assessee in the revised return of income claimed the relief under section 89 of the Act on account of the contribution made by the employer towards the superannuation fund as it was representing the arrears for the financial years beginning from 2009-10 to 2012-13. But the revised return was not processed as the original return was belatedly filed which cannot be revised. Thus it is clear that the assessee was not given the benefit of the provisions of section 89 of the Act. Accordingly, the apprehension of the Ld. DR is also answered in affirmative that the revised return was not processed being belated original return.

From the above, there remains no doubt that the amount contributed by the employer of the assessee towards the superannuation fund has already been included to the total income of the assessee. Therefore we hold that further addition of rupees 4,32,094.00 would lead to double addition which is prohibited under the provisions of law. Hence we reverse the order of the authorities below. Accordingly we direct the AO to delete the addition made by him. Thus the ground of appeal of the assessee is allowed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 08/08/2019 at Ahmedabad.

**-Sd-
(Ms MADHUMITA ROY)
JUDICIAL MEMBER**

(True Copy)
Ahmedabad; Dated 08/08/2019
Manish

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**