

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'D', NEW DELHI**

Before Sh. Bhavnesh Saini, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 422/Del/2008 : Asstt. Year : 2004-05

ITA No. 58/Del/2010 : Asstt. Year : 2006-07

William Scott Pinckney, 9 th Floor, Tower A & B, Express Trade Towers-1, Plot No. 15-16, Sector-16A, Noida-201301	Vs	Deputy Commissioner of Income Tax, Circle-1(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAMPP9190L		

Assessee by : Sh. Tarandeep Singh, CA

Revenue by : Smt. Naina K. Soin, Sr. DR

Date of Hearing: 13.08.2019

Date of Pronouncement: 26 .08.2019

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The assessee has raised the following grounds:

"1. That the order u/s 250 of the Income-tax Act, 1961 (the 'Act') is bad in law and demand levied therein should be deleted.

2. Additions on account of Superannuation/Health Insurance Contribution

The CIT(A) has erred in confirming the additions made by the Assessing Officer amounting to Rs.2,276,339 as the value of contribution paid by the employer towards superannuation contributions and Rs.21,825 towards health insurance premium to cover employees in respect of medical ailments as perquisites. Therefore, the same should be deleted.

3. Interest u/s 234B of the Act

The CIT(A) has erred in confirming the interest u/s 234B for default in payment of advance tax to the extent of additions

on account of Superannuation/Health Insurance Contribution. Consequent to ground no. 2 the interest under Section 234B should also be deleted."

2. The assessee's employer M/s Amway India Enterprises has entered into an agreement with M/s Amway Australia whereby for administrative convenience, at the request and on behalf of Amway India, Amway Australia shall pay his salary amounts in assessee's home country. Further, it was seen that under the above stated arrangement debit notes raised by Amway Australia as charge for salary etc., disbursed on behalf of Amway India were being accepted for payment by Amway India. As an illustration, the assessee enclosed photocopies of such debit notes for April, 2003 and December, 2003 for Australian Dollar 31,297.75 each, which clearly mention charge for salary, allowances and other benefits disbursed on AIE. The assessee was found to have received the following amounts:

1. Company superannuation contribution	AUD 71583
2. Temporary disablement insurance	AUD 3619
3. Health Fund	AUD 4862
Total	AUD 80064

The assessee further stated that these amounts are in respect of the contributions made by the employer towards Superannuation and other related contribution is made by the employer. That the benefit accrues only on happening of any contingent event or attaining the specified age and accordingly the contributions made by the employer to these schemes are not liable to tax. The Assessing Officer held that as per Section 17(2)(v) any sum payable by the employer, whether directly or through a fund, other than an approved superannuation fund, to effect a contract for an annuity constituted a 'perquisite'. In

the present case, the employer was contributing towards a superannuation fund scheme and the benefit under that scheme was annuity payment until death of employee and thus this contribution to superannuation fund was to effect a contract for annuity clearly falls under Section 17(2)(v) of the I.T. Act, 1961. The assessee's contention that no benefit vests in him at the time of contribution is made by the employer is not correct. The employee has got vested right in the fund as soon as the contribution is made to the fund. Therefore, the amount of AUD 71,583 (Average conversion rate of 1 AUD = Rs.31.80 for the period April, 2003 to March, 2004) i.e. Rs.22,76,339/- is treated as perquisite u/s 17(2)(v) of the I.T. Act and added to the returned income of the assessee.

3. During the hearing before us the Ld.AR argued that the assessee continues to be the employee of the Amway Australia and hence would be eligible to all the benefits extended to the employees there at Australia. It was argued that since it's a short term contract with the Indian company which was approved by the Amway Australia, the assessee wouldn't sever his connections with the parent company. Since the amounts were paid by the parent company and no immediate benefit accrued to him as on now and the contribution to superannuation guarantee is not taxable. It was argued that benefit accrues only on happening of specified contingent event or attaining the specified age and hence not taxable. He also relied on the judgments in the case of L.W Russel 53 ITR 91, NKS Lal 208 ITR 14, T. Adashi 100 TTJ 332, pramod Bhasin 8SOT 72 (DEL)

4. Ld. DR relied on the orders of the Revenue.

5. Heard the arguments of the parties and perused the record before us. And the following pertinent points are brought out.

- The assessed is a full time employee of Amway India, he is on a contract with Amway India
- All the salary and allowances are paid by Indian company.
- The arrangement between the Australian company and Indian company only restricted to reimbursement of amount paid in Australia.
- Even the remittances in foreign currency also represent the part of the salary.
- As per the agreement between Amway India and Amway Australia, the Indian company is to be responsible for any act or omission of the employee as employee of Amway India
- In the background of these facts the relevant order of the LD.CIT(A) is perused.
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• It is the contention of the assessee that the disputed amount represents so called contributions of the employer to the "superannuation guarantee scheme" and the benefits will accrue only on attaining particular age etc. Hence there is no right to receive such amount during the year and accordingly no income accrues to the assessee in this year. Before jumping to a conclusion it is relevant to look into the Scheme and nature of payment. A copy of the scheme is filed in response to specific query during appellate

proceedings. On perusal of the scheme it is noticed that it is applicable to all employers as well as employees located in the territory of AUSTRALIA. It has no application to those employees, who are non residents working outside Australia. Whereas the appellant is neither resident employee nor employee of the Australian company to attract the scheme.

• It is evidenced by the Assignment letter, a copy of which is filed in the course of appellate proceedings as well. The terms and conditions of the contract is so lucid that there is no scope for taking any other view than to conclude that the assessee is whole time employee of Indian concern only. The assessee has snapped Ties with the Amway Australia as soon as he has been contracted by Amway India He has no link either directly or indirectly with Australian enterprise. By virtue of such contract the appellant is in receipt of remuneration as per terms and conditions for the services rendered in India. As per agreed terms, a part of salary is paid in India and balance part in Australia in foreign currency. For such payment the employer of the assessee had an agreement with Australian enterprise to transmit the foreign currency payment for administrative convenience. Such agreement nowhere refers to any payment towards superannuation guarantee scheme] No evidence is forth coming to suggest that the Indian company has indeed contributed to the so called scheme. In fact there is no material in the form of any challan etc to say that it is for the scheme. If the Australian company remitted the amounts to the scheme, the same is

done on its own volition and it has no connection with the Indian company. If Australian co has done so, then the assessee also must be on the rolls of that concern. Otherwise the contribution to such scheme cannot be made by any employer residing in Australia for non-residents. But the facts as revealed does not suggest that the assessee neither working in Australia nor employed by the Australian co.

- *There is an agreement between Indian and Australian companies as regards to reimbursement of foreign currency part of salary for administrative convenience. Both the parties agreed upon to enable the assessee to receive a part of the remuneration in his home country. Subsequent application of such salary by the Australian company to discharge its legal obligation, if any, does not bind either Indian co or the appellant in any manner.*

- *Vide a separate letter the assessee was offered an assignment as "Senior GM Distributor relations/Marketing & Operations" for a period of 3 years, which is extendable by Amway India. And it is indeed extended accordingly. In the terms of assignment the appellant was offered Basic pay & Allowances, Bonus, Ex-gratia, Completion Bonus, Housing, car, Relaxation Leave, Home leave etc. Vide the same letter the appellant has been debarred from carrying any employment or activity of commercial nature more specifically with Amway Australia. Further it was expressly stated that the assessee is a whole time employee of*

Amway India for the contract period and should not have any direct or indirect link with any other affiliates.

- *From the reading of various terms and conditions as well as other facts narrated in the preceding paragraphs, it is evident that the said payment does not represent contributions to Superannuation Fund. For certain the employer of the assessee has not made any such payments. The Indian employer has no nexus to such payments nor under any obligation to do so.*

- *..various case laws by the Id AR in support of the view that contributions to the Annuity scheme does not form part of income of the employee. As already discussed the facts ruling in the instant case are totally different from those cases. In this case a part of salary was remitted in foreign currency to Australia. In the course of such process the help of Australian company was sought purely for the sake of administrative convenience. Such remittance represent salary of the assessee only. It would not assume any other character ..*

- *It is assumed, for the sake of discussion, that the payments do represents contributions to the Fund then the assessee would be in a position to claim benefits provided such 'Fund' is approved by the Competent Authority. If such scheme is approved, subject to certain quantum limits, the contributions so made by the employer would not be part of total income. The intention of the Legislature is reiterated by including the 'contributions to an approved Fund' under Fringe Benefit Tax' provisions. Such inclusion fortifies the view that any contribution to an unapproved*

Fund do form part of income of the employee. Further it is not out of place to refer to another clause introduced recently w.e.f 1-4-2004. A new clause (viii) was inserted to subsection (1) of section 17 in the statute. Which refers to contributions made by central govt to employees pension account. Such contributions partake the character of salary in the first instance and allowed deductions u/s80CCD OF Act as per limits prescribed. There is no blanket exemption provided to all such contributions. In the light of above it is clear that the case of the assessee does not fall in the category of exemptions under any logic. The scheme is not approved under Indian laws nor the Indian company contributed the amounts for any scheme whether approved or not.

- *On the other hand, it is clear from the above that the payments are nothing but salary only. It is direct payment to the assessee for the services rendered as per agreed terms. Part of it received in India and other part in Australia in foreign currency. Application of that of salary, received in Australia, for various purposes by the Australian company, not by the employer, would not make any difference to the nature of receipt in the hands of the assessee. Hence the said payment is includable as salary. As per various clauses of assignment letter, it is unambiguously referred the amounts paid in Australia as 'remuneration' only.*

- *The assessee is on periodical contract with Am way India for 3 years with a provision to extend the contract. He is purely on contract basis with no scope of permanency. As the Amway India is a newly formed company engaged in*

innovative concept of business, which is novel to India and there is no local expertise available, decided to engage the services of the appellant who has sufficient knowledge in this field. Hence assessee's term with the Indian company is for limited period only. Accordingly not on the rolls of Amway India on permanent basis. The employer i.e. Amway India has a trust for the benefit of its regular employees as per relevant laws of the country. However the Indian employer has not contributed to any fund on behalf of the appellant. Consequently the assessee is not part of any fund much less approved fund. Hence the arguments canvassed on behalf of the assessee has no place to fit into the facts of the instant case merit consideration.

6. we have gone through the facts on record, arguments of the parties, case laws and the ratio of the Ld.CIT(A) and we are in agreement with the decision of the Ld.CIT(A) that the amount represents "perquisite" as defined in section 17(2) of the Income Tax Act 1961 and hence we decline to interfere with the order of Ld.CIT(A).

7. Regarding the interest charged u/s 243B, we find that the ITNS signed by the Assessing Officer has clearly mentioned levy of interest u/s 234B. Hence we decline to interfere in the order of the Ld.CIT(A) on this ground.

8. In the result, both the appeals of the assessee are dismissed.

(Order pronounced in the open Court on 26.08.2019)

Sd/-

(Bhavnes Saini)
Judicial Member

Dated: 26 /08/2019

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member