

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI
BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.1720/Mum/2021 (A.Y: 2017-18)

Ajay B. Ghose Flat No. 504, Angelo, Hiranandani Estate, Ghobander Road, Thane Maharashtra- 400607.	Vs.	DCIT – CPC Post Bag No. 1, Electronic City, Bangaluru – 560500.
PAN/GIR No. : AEBPG1796A		
Appellant	..	Respondent

Appellant by :	Shri. Gunjan Kakkad. AR
Respondent by :	Shri. Mehul B. Jain. DR

Date of Hearing	10.11.2021
Date of Pronouncement	15.11.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-(NFAC) Delhi passed u/s 143(1) and 250 of the Act. The assessee has raised the following grounds of appeal:

Ground No. 1: No adjustment to total income was warranted

- 1. On the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre [hereinafter referred to as "the Ld. CIT(A)" for sake of brevity] has erred in confirming the action of Deputy Commissioner of Income-tax, Centralised processing*

centre (hereinafter referred to as "the DOT CPC" for sake of brevity) in respect of adjustment made to total income of the Appellant.

2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not considering the explanation that was furnished by the Appellant in respect of the adjustments made to the total income*

Ground No. 2: Additions to total income could not be made on issue which are debatable

3. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition made by the Ld. CIT(A) on issues which are debatable and thus, could not have been subject matter of adjustment under section 143(1) of the Income-tax Act, 1961 ("the Act")*

4. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not considering the judicial precedents in a proper perspective which supports the case of the Appellant.*

Ground No. 3: Voluntary severance pay/ ex-ratia received by the Appellant on account of termination of employment constitutes a capital receipt and thus, not taxable as income

5. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that voluntary ex-gratia received by the Appellant is taxable under section 17(3)(i) of the Act.*
6. *On the facts and circumstances of the case and in law, the voluntary exigatia payment received by the Appellant cannot*

be considered as compensation for the purpose of section 17(3)(i) of the Act.

Ground No. 4: Violation of principles of natural justice

7. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not providing any opportunity of personal hearing before disposing the appeal of the Appellant.*
8. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has failed to consider the submissions of the Appellant in a proper perspective which has resulted into a flaw in the decision- making process.*
9. *On the facts and circumstances of the case and in law, the Appellant submits that the order of the Ld. CIT(A) and that of DCIT CPC deserves to be quashed on account of failure to comply with principles of natural justice.*

Ground No. 5: Granting of credit for tax deducted at source

10. *On the facts and circumstances of the case and in law, the Appellant submits that the income-tax department must be directed to grant credit for tax deducted at source in accordance with law.*
11. *The appellant craves leave to add, to alter and / or amend all or any of the foregoing grounds of appeal.*

2. The Brief facts of the case that the assessee is an employee and filed the return of income for the A.Y 2017-18 on 01.08.2017 disclosing a total income of

- 4 -

Rs.35,32,970/-. The assessee's income consists of income from salary, loss from house property and income from other sources. The assessee has received the intimation u/s 143(1) of the Act on 04.05.2018 by email, where the A.O.(C P C) has assessed the total income of Rs.1,16,46,980/- and raised a demand of Rs. 36,71,880/-. During the financial year under consideration, the assessee has received an amount of Rs.74,28,585/- towards severance pay due to loss of employment from the employer M/s.AREVA India Pvt Ltd because of shutting down the business operations in India. The assessee was working with the AREVA group from the year 2006. The assessee has received the intimation with the addition of severance pay of Rs.74,28,585/- and mismatch of income as per Form no 26AS.

3. The assessee has filed the petition for rectification of mistake and the grievance was in respect of the claim of severance pay received on account of loss of employment and other claims. The assessee has submitted the reasons on severance pay claim as capital receipt and also challenged the provisions of adjustments being outside the scope of section

143(1) of the Act. The assessee has filed a letter on the merits of the case along with the judicial decisions but there was no action from the DCIT.CPC. Finally the intimation was passed u/s 143(1) of the Act on 27-03-2019.

4. Aggrieved by the order of the DCIT CPC, the assessee has filed an appeal with CIT(A). Since there was a delay in filing the appeal, the CIT(A) has condoned the delay considering the facts that the assessee was pursuing the rectification proceedings as alternative remedy. Whereas, in respect of addition of severance pay, the contentions raised by the assessee are that it is a capital receipt. But the CIT(A) is of the opinion that it forms part of the income u/s 17(3)(i) of the Act and confirmed the addition and granted relief in the other grounds of appeal with respect to adjustment of TDS credit and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Honble Tribunal.

5. At the time of hearing, the Ld. AR of the assessee submitted that the CIT(A) has not considered the vital facts on merits of the case and the judicial decisions.

The Ld.AR emphasized that the CPC does not have power to make the adjustments in the intimation passed u/sec 143(1) of the Act. Whereas, on the merits of the case, the Ld. AR submitted that the severance pay is in the nature of the ex-gratia payment received from the employer on termination of employment/services of the employee and such payment take the character of a capital receipt and not liable to tax. The employer of the assessee has included the said sum in the form.no 16 and deducted Tax at Source. Since it is a voluntary payment by the employer it cannot be considered as a compensation under Sec.17(3)(i) of the Act. The Ld.AR substantiated the submissions with the voluminous paper book and judicial decisions and prayed for allowing the appeal.

6. Contra, the Ld. DR submitted that it is a onetime conditional payment and is a part of the salary income. Further it cannot be treated as capital receipt and supported the order of the CIT(A).

7. We have heard the rival submissions and perused the material on record. Prima-facie, the disputed issue envisaged by the Ld.AR is with respect to adjustments not permitted u/s 143(1) of the Act and

on the merits of the case in respect of voluntary severance payment received from the employer to be treated as capital receipt. Though the Ld.AR has raised the grounds of appeal on legal aspects and on the merits of the case but has restricted his arguments to the extent of merits of the claim. The contentions of the Ld.AR are that the assessee was in employment with the M/s.AREVA India Pvt Ltd from the year 2006 but due to shutting down of business operations in India the assessee has lost his employment. The Ld.AR demonstrated a letter dated 31.05.2016 issued by the company at page 104 of the paper book disclosing the facts that due to various reasons and ongoing business situation the company was close down. As per the conditions, the assessee is eligible for onetime severance payment along with full and final settlement.

8. The Ld.AR submitted that it is a voluntary payment by M/s AREVA India Pvt Ltd due to shut down of business operations. Further at page 106 of the paper book form.no.16 was referred, were the severance payment amount has been included by the employer in the gross salary. The Ld. AR also referred to the

rectification petitions filed against the intimation u/s 143(1) of the Act with the CPC. The Ld. AR contended that the assessee is entitled for the severance payment due to company shut down and the payment takes the character of a capital receipt.

9. We on perusal of the facts, the letter and the Ld.AR submissions find that the assessee was in employment for more than a decade with the company and due to business operations shutting down in India the company has taken a call to pay the severance payment along with the full and final settlement. The fact is very clear that it is the voluntary payment made by the company for loss of employment which cannot be disputed. The Ld.AR supported the submissions with the following judicial decisions as under;-

- “1. *CIT Vs. Ajit Kumar Bose, [1987] 165 ITR 90*
2. *CIT Vs. Sharda Sinha [2016] 237 Taxman 111 (Delhi)*
3. *Oberio Hotel (P) Ltd. Vs. CIT [1999] 236 ITR 903 (SC)*
4. *Khanna & Annadhanam Vs. CIT [2003] 351 ITR 110 (Delhi)*
5. *Arunbhai R Naik Vs. ITO [2015] 379 ITR 511 (Guj)*

6, Chandrakant Tolia Vs. ACIT [2009] 316 ITR 312
(Madras)

7. Bajaj Auto Finance Ltd. Vs. CIT [2018] 404 ITR 564
(Bombay)

8. Kvaverner John Brown Engg. Vs. ACIT [2008] 305 ITR
103 (SC)

9. Khatua Junkar Ltd Vs. KS Pathania [1992] 196 ITR 55
(Bombay)”

10. Further the severance payment to the assessee is voluntary in nature and it does not amount to compensation within the provisions u/s 17(3)(i) of the Act. We find High Court of Calcutta in CIT Vs Ajit Kumar Bose(165 ITR 90)(CAL) observed and held as under:

“1. During the accounting period relevant to the assessment year 1970-71 ending on March 31, 1970, the employer terminated the services of the assessee by giving him the requisite three months' notice. In addition to the pay and salary for the period of notice, the employer paid to the assessee a sum of Rs. 24,933. The question was whether this amount could be treated as profits in lieu of salary within the meaning of Sub-clause (i) of Clause (3) of [Section 17](#) of the Income-tax Act, 1961 ("the Act"). The employer had, by its letter dated July 3, 1969, stated that in view of the closure of the business of the company, the assessee would be paid the requisite three months' salary as well as the amount due on account of his leave and in addition, he would be paid an ex gratia sum of Rs. 24,933 which would be subject to income-tax.

2. The Tribunal has, on a review of the matters on record, found that this amount was received by the assessee as a capital receipt. It has further found that it was really an ex gratia payment; it was not compensation within the meaning of [Section 17\(3\)](#). The Tribunal took the view that the word "compensation" denotes an idea that it is paid in lieu of something which the assessee could claim as of right and of which he was being deprived. The amount in question was an ex gratia payment, i.e., it was paid by the employer voluntarily without being under any obligation to pay it.

3. [Section 17](#) deals with salary, perquisite and profits in lieu of salary. Clause (3) reads :

"(3) 'profits in lieu of salary' includes-

(i) the amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment or the modification of the terms and conditions relating thereto."

4. The amount in question was received by the assessee from his employer. It was received by him in connection with the termination of his service. But the question still remains whether it was compensation. Since it was received by the assessee in connection with the termination of his employment, the term "compensation" would be referable to that event. In other words, it is to be seen whether the amount was paid as compensation for the termination or in lieu of the termination of the employment.

5. The letter issued by the employer dated July 3, 1969, stated that the amount was being paid ex gratia. There is nothing to indicate that the assessee was entitled to continue in the employment of the company up to any particular age.

Under the conditions of service, his services were liable to be terminated on giving three months' notice without assigning any reason. Under the circumstances, it cannot be said that the assessee was entitled to remain in service for any period longer after the requisite notice has been given or that the employer was under any obligation to pay anything to the assessee in connection with the termination of his employment other than the salary for the period of notice. Under the circumstances, in its true nature and character, the payment was ex gratia, that is to say, totally voluntary; it was not compensation which implies some sort of an obligation to pay.

6. In this view, it cannot be said that the amount in question was profits in lieu of salary within the meaning of Clause (3) of [Section 17](#). It was not taxable as such. The finding of the Tribunal that the amount was a capital receipt or that it was payment of a casual and non-recurring nature was in the circumstances not necessary. We, hence, do not express any opinion on it.

7. The question of law referred to us in this case, namely :

"Whether, on the facts and in the circumstances of the case, the amount of Rs. 24,933 received by the assessee could be treated as income under the charging section or under the section dealing with the computation of income of the assessee ?"

8. is answered in the negative, in favour of the assessee and against the Department.

9. There will be no order as to costs."

11. On applying the ratio of the decision to the present case, the fact remains that the assessee was paid severance pay due to loss of employment because of shutting down of business operations in India.

Further, such payment takes the character of a capital receipt and cannot be considered taxable u/s 17(3)(i) as a compensation. The assessee has received the onetime payment and it is not recurring in nature. We are of the substantiate opinion that the assessee has lost his employment which was continued from the year 2006. The letter dated 31.05.2016 was in respect of severance payment received by the assessee though specifically does not mention the term “ex-gratia” but the fact remains that the assessee has lost his employment at the instance of the employer closing down its business operations in India. We are of the considered view that the receipt of severance pay though the nomenclature is not mentioned as ex-gratia but takes the character of a capital receipt and the payment was made voluntary by the employer for loss of employment. and such capital receipt is not taxable in the hands of the assessee. Accordingly, we set aside the order of the CIT(A) and direct the Assessing officer to delete the addition and allow the grounds of appeal in favour of the assessee.

Since we have decided the appeal on merits and allowed in favour of the assessee. Again adjudicating

- 13 -

on technical issues will become academic and are left open.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 15.11.2021

Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 15.11.2021

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai