IN THE INCOME TAX APPELLATE TRIBUNAL
"H" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, HON'BLE JUDICIAL MEMBER AND SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA.NO. 1860/MUM/2021 (A.Y: 2017-18)

Shri Sanjay Laxman Kangude Room No. 145, Golphadevi Road Behind Golphadevi Mandir Worli Koliwada, Worli Colony Mumbai - 400030 **PAN: AMQPK3508B**	*v.*	ACIT – Circle–34(3) Room No. 820, 8th Floor Kautilya Bhavan, C-41 to C-43 G-Block, Bandra Kurla Complex Bandra(E), Mumbai - 400051
(Appellant)		**(Respondent)**

Assessee by	**:**	**Shri Jitendra Jain & Shri Ravikant S. Pathak**
Department by	**:**	**Bharti Singh**
Date of Hearing	**:**	**07.04.2022**
Date of Pronouncement	**:**	**22.04.2022**

O R D E R

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of Learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter for short "Ld. CIT(A)] dated 13.08.2021 for the A.Y.2017-18.

2. Brief facts of the case are, assessee e-filed his return of income on 30.07.2017 declaring total income of ₹.61,04,260/- the return was processed u/s.143(1) of Income-tax Act, 1961 (in short "Act") and thereafter the case was selected for scrutiny. The notices u/s. 143(2) and 142(1) were issued and served on the assessee along with the questioners. In response assessee made the submissions electronically and after considering the submissions Assessing Officer observed that the case has been selected for limited scrutiny and examine the issue "Relief u/s. 89". The relevant information as submitted by the assessee are, assessee has submitted Form 10E in support of his claim after relief u/s.89(1) along with the copy of Form -16 issued by employer M/s.Century Textiles and Industries Limited. The background of the issue is M/s.Century Textiles and Industries Limited was incurring heavy losses and shut down its Worli Textile Mill Unit in 2008. Around 6300 of its 6600 Mill workers opted for the voluntary retirement scheme, however, 275 workers had opposed for closure of the Mill. Assessee is one of the 275 employees who did not opt for voluntary retirement scheme declared by the company on 13.11.2006. The company in its application to the Labour Commissioner inter-alia offered to pay an ex-gratia amount of compensation to each of the 275 employees provided they accept the

closure and termination of their services without agitating the issue or obstructing the development of the entire Mill land. The company offered to earmark a piece of land admeasuring 1.08 acres out of the total Mill land which would not be developed or otherwise dealt with till the entire amount of all the employees have been paid.

3. The above said application was decided by the Labour Commissioner vide his order dated 11.01.2008 granting permission to the company to close down its Textile Mill Unit at Worli. Accordingly, by notice dated 12.01.2008, unit was closed down and services of all the 275 employees terminated w.e.f 12.01.2008. The Government of Maharashtra vide letter no TPB-4308/317/CR/182/08/UD011 dated 30.09.2008 addressed to Municipal Corporation imposed the following conditions on the company, to safeguard the interests of the 275 workers who had not opted for voluntary retirement scheme.

> *i. The plot measuring 1.08 acres was to be reserved for the 275 ex-workers till the last of these workers completes the age of 63 years and till then the plot cannot be sold or developed.*
>
> *ii. if the Company fails to effect ex-gratia payment to the ex-workers as per the provisions of its undertakings, the Company would not be entitled to sell or develop the said plot.*

4. Accordingly, the ex-workers barring a few, entered into individual agreements with the Company confirming the terms and conditions

specified above. As per the terms of agreement dated 22/2/2010 between the Company and the individual workers, it was specifically agreed that each of the 275 ex-workmen would be paid an ex-gratia amount per month on the condition that they would not obstruct the development of the entire Mill land (except 1.08 acres of land). By the agreement, the ex-worker accepted the closure of the Mill and also accepted their consequent termination of service and also agreed that they be treated as left employment and has having given up their right of employment. Clause 7 of the agreement also specified that any time in the future, if the Second party, ie, the individual worker, decided to accept a lumpsum amount in lieu of the amount agreed to be paid, then both parties would be free to settle the same mutually. The Company entered into a Supplementary Agreement dated 25/11/2016 individually with the ex-workers with the aim of settling the matter forever whereby, each exworker agreed to accept a lump sum amount in lieu of the remaining years of service up to 63 years of age. As per the terms of the agreement, the assessee has agreed to fore-go all rights, title or interest in the earmarked land of 1.08 acres and the Company shall continue to be the absolute owner of the earmarked land. The Company also confirmed that the one time lump sum ex-gratia amount was towards full and final

settlement and no claim would lie against any remuneration, compensation, ex-gratia or any other benefits.

5. In accordance with the Supplementary agreement dated 25/11/2016, the Company has computed the total dues payable by the Company to the assessee till he attains 63 years of age to be ₹.59,15,934/-. The company has paid the 'one time lump-sum ex-gratia amount' of ₹.42,09,968/- after deducting income tax of ₹.17,05,966/- as per the provisions of Section 192 of the Act. The Company in the said agreement has explained that the one time lumpsum ex-gratia amount is deemed 'salary' paid to an exemployee in advance within the meaning of the provisions of the Act, it has therefore, deducted tax at source in accordance with the relevant provisions of the income tax act, 1961, as stated above. Form 16 has been duly issued to the assessee by the Company for the relevant F.Y 2016-17 certifying deduction of tax. In the return of income for the A.Y 2017-18, the assessee has claimed relief u/s.89(1) of the I.T. Act, 1961 on the compensation received by him, duly uploading Form 10E along with the ITR filed on the e-filing site. The total income declared is ₹.61,04,260/- with tax of ₹.59,890/-. Relief u/s.89(1) has been claimed as ₹.16,46,076/-. The assessee has also submitted the computation chart of the compensation as provided by the Company. As

per the computation chart, for F.Y. 2016-17, the assessee received monthly payment as per the terms of agreement dated 26.02.2010. For the month of November 2016, a total amount of ₹.1,73,855/- is shown. The chart also gives a year-wise break-up of the computation of the lumpsum amount, on the basis of amount payable to the assessee from F.Y 2016-17 till F.Y 2036-37, when he attains 63 years of age.

6. Verification of Form 10E uploaded by the assessee reveals that the he has claimed relief in Annexure I of the Form, which pertains to arrears or advance of salary as per Sub rule (2) of Rule 21A of the I.T. Rules, 1962. In Table 'A' of the Annexure, the assessee has spread over the amount received and claimed it to be payable in A.Y 2017-18 to A.Y 2036-37. For computing the tax for the future A.Ys, the tax rates of A.Y.2017-18 have been adopted. The relief so worked out, amounts to ₹.16,46,076/-. However, the computation of relief u/s 89(1) of the I.T. Act, 1961 in the case of compensation on termination of employment, is as per Sub-rule (4) of Rule 21A of the I.T. Rules (Annexure III of form 10E)

7. The Assessing Officer observed that as per Rule 21A the mode of computation of relief u/s. 89(1) are different in terms of "salary in

advance" or as "compensation of termination of employment" would determine whether the mode of computation of relief u/s. 89(1) falls under sub rule (2) or sub rule (4) of rule 21(A) of the I.T. Rules 1962.

8. By referring to the company letter dated 11.12.2019 he observed that payments made to the employees are in the nature of the lumpsum ex-gratia payments. He observed that company has issued a further addendum on 13.12.2019 that it has paid one time lumpsum ex-gratia amount to its ex-workers, in lieu of payments till completion of 63 years of age. Since the above mentioned one-time lumpsum ex-gratia amount is deemed 'salary' paid to an ex-employee in advance within the meaning of the provisions of the Income Tax Act, 1961 and accordingly the Company has deducted tax at source in accordance with the relevant provisions of the income Tax Act, 1961.

9. Accordingly, a show-cause notice was issued to the assessee on 20.12.2019 asking him to explain why the amount received should not be treated as compensation on termination of employment.

10. In response assessee submissions as under: -

> *"10. The assessee in his reply has claimed that vide supplementary agreement, the employee agreed for lump sum ex-gratia amount of*

Rs.59,15,934/-. The Company has computed the total dues payable by the Company to the assessee till he attains 63 years of age. The company has paid the 'one time lump-sum ex-gratia amount' of after deducting income tax as per the provisions of Section 192 of the Income Tax Act, 1961. The Company in the said agreement has explained that the one time lump sum ex-gratia amount is deemed 'salary' paid to an exemployee in advance within the meaning of the provisions of the Income Tax Act, 1961, it has therefore, deducted tax at source in accordance with the relevant provisions of the Income tax Act, 1961.

10.1 According to the assessee, the amount is advance salary for the period 2017-18 to 2036-37, till the employee attained 63 years of age. The assessee also submits that even though the assessee vide agreement agreed to termination of employment, it was subject to him receiving compensation by way of salary plus DA upto the age of 63 years, The amount paid represents salary received for future years in advance. As the entire salary for future years has been received in the current year, it has been offered to tax. If the amount had been received in installments every year, he would have offered the same to tax in those respective years. Relief u/s 89(1) has been claimed for relief on account of the substantial tax burden due to the entire amount received in the current financial year."

11. After considering the submissions advanced by the assessee Assessing Officer rejected the same and observed as under: -

"The nature of payment received by the assessee, by his own claim, falls within the purview of 'Income from Salaries'. The Company in the Supplementary Agreement dated 25/11/2016 has also confirmed that the one time lump sum ex-gratia amount is deemed 'salary' paid to an ex-employee in advance within the meaning of the provisions of the Income Tax Act, 1961.

12. Section 17(3) of the I.T. Act, 1961 defines 'Profits in lieu of salary' to include:

(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;...

Thus, by virtue of section 17(3)(i), 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 modifications of terms of employment is taxable as profits in lieu of salary.

13. The Company, in its reply to notice u/s 133(6) has confirmed that the assessee is an ex-worker and that the payment made to him is a one-time lump sum ex-gratia amount. The terms of the Agreement dated 11.01.2017 are unambiguous regarding termination of service of the ex-worker and also clarify that the ex-worker has left employment and given up his right of employment. Vide Clause 4 of the Supplementary Agreement also, the Company has declared that the ex-gratia payment is towards full and final settlement with the ex-employee and no claim of the ex-worker would lie against the company towards any remuneration, compensation, ex-gratia and any other benefits. The services of the ex-workers stood terminated, effectively, as on 12/1/2008 with the closure of the Company.

….

In view of the above, the relief u/s. 89 of the Income-tax Act, 1961 in the case of the assessee is restricted to ₹.3,01,889/-. Penalty proceedings under section 270A is initiated separately for underreporting of income in consequence of misreporting of income."

12. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and Ld.CIT(A) sustained the view of the Assessing Officer with the following observations: -

"From a perusal of above, it is noted that the facts of the case of the Appellant is squarely covered under Rule 21A(1)(c) of the Income Tax Rules and the Relief under Section 89 of the Income Tax Act, 1961 is to be computed in accordance of Rule 21A(4) of the Income Tax Rules. It is further noted from a perusal of the impugned assessment order that the AO has rightly invoked the Rule 21A(1)(c) in the case of the Appellant.

'The Appellant has relied on various judicial pronouncements in support of his submissions. However, with due respect to Hon'ble Courts, it is worthwhile to mention here that in order to allow Relief under Section 89 of the Income Tax Act, 1961 by treating the compensation received by the Appellant as salary for each year in future upto AY 2035-36 i.e. the year in which the Appellant attains the age of 63 as per the agreement, it is necessary to consider the income of the Appellant for each such year other than the salary in question. It is not possible to ascertain income of Appellant for future years and it can also not be concluded that the Appellant would not earn any Income in future years. As such, it is practically not possible to ascertain the actual amount of relief to be allowed to the Appellant under Section 89 of the income Tax Act, 1961.

In view of above discussion, I find no reason to interfere with the assessment order passed by the AO.

The above grounds of appeal of the Appellant is, accordingly, 'dismissed."

13. Aggrieved with the above order assessee is in appeal before us raising following grounds in its appeal: -

"1. On the facts and circumstances of the case and in law, the National Faceless Appeal Centre (NFAC) erred in confirming relief of ₹.3,01,889/- allowed by learned A.O. under section 89(1) of the Act read with Rule 21A(1)(c).

2. On the facts and circumstances of the case and in law, the National Faceless Appeal Centre (NFAC) ought to have allowed relief under section 89(1) read with Rule 21A(1)(C) amount to ₹.16,46,076/-.

3. The appellant craves leave to add, alter, modify or delete any of the above grounds of appeal."

14. Ld. AR of the assessee brought to our notice facts of the case in detail and submitted that the amount received by the assessee is whether

it falls under salary received in advance or compensation for termination. He brought to our notice Page No. **27 to 736** of the Paper Book to submit that several other employees who also claimed the similar claim u/s. 89 of the Act and in those cases the revenue has accepted that the compensation received by the respective individual are in the form of salary received in advance. He submitted that the case of the assessee is exactly similar to the above cases and revenue cannot take different views on the exactly similar issue. Further he brought to our notice the agreement between the individuals and the company. In this regard he relied on the case law filed before Ld.CIT(A) and further relied on two case law which are reproduced below: -

a) V.D. Talwar v. CIT [1963] 49 ITR 122 (SC).
b) Patil Vijaykumar v. CIT in writ petition nos. 4916 to 4936 of 1984 dated 10.08.1984.

He submitted that the above said case law are exactly similar to the facts of the assessee's case.

15. On the other hand, Ld. DR submitted that assessee is an ex-employee and received the compensation as ex-gratia as per the letter issued by the company. It clearly indicates that it is only a compensation not advance salary, in this regard she relied on the finding of the

Ld.CIT(A) and brought to our notice Para No 10 of the order of the Ld.CIT(A).

16. Considered the rival submissions and material placed on record, we observed from the record that assessee is one of the employee who did not agree for the voluntary retirement scheme offered by the company and subsequently company has pledged a piece of land for the benefit of 275 employees who are not agreed for the voluntary retirement scheme compensation. Subsequently owing to the order of the Labour Commissioner and Municipal Corporation of the Greater Mumbai which imposed certain conditions on the company to safeguard the interest of the 275 workers who had not opted for voluntary retirement scheme.

17. Subsequently individual employees and the company entered into supplementary agreement and the company agreed to compute the total compensation payable by the company till they attain 63 years of age and accordingly in the case of the assessee it was determined to be at ₹.59,15,934/-. The company after considering that these are one time lumpsum ex-gratia amount payable to the employee and settled the same after deducting the TDS as per the provision u/s. 192 of the Act. We observe from the record that company in the supplementary agreement

has explained that the one time lumpsum ex-gratia amount is salary paid to the ex-employee in advance and accordingly, it has deducted tax at source in accordance with the provisions of the I.T. Act.

18. In this regard the company also issued Form 16 to the assessee for the relevant year 2016-17. On careful consideration of the facts on record we observe that even though the textile unit was closed on 2008 and assessee has refused to agree the voluntary retirement scheme offered by the company and under protest assessee and similar employees managed to get compensation through Labour Commissioner and as per the directions of the Labour Commissioner, as agreed by the company, the assessee was awarded the compensation for the remaining period of service till the age of 63 years. The basis of compensation calculated by the company and the company also treated the one-time compensation as a salary paid in advance and deducted the TDS on the same, clearly indicates that the compensation received by the assessee is only salary received in advance not as termination compensation even though this was paid in lumpsum as ex-gratia in one go.

19. As brought to our notice by the counsel for the assessee the case of V.D. Talwar *v.* CIT (supra) the Hon'ble Supreme Court held as under: -

"Learned counsel for the appellant has then relied on Duff (H. M. Inspector of Taxes) v. Barlow [1942] 10 ITR (Suppl.) 157. That was also a case where the parties agreed that the arrangement arrived at between them should subsist up to 1945 though no exact percentage of the remuneration payable was fixed. The arrangement however was brought to an end prematurely in November 1937 and in consideration of his premature termination some remuneration was paid for services up to November, 1937 and a sum of pound 4,000 was paid as compensation for the loss of the employee's right to future remuneration under the earlier agreement of 1935. In these circumstances it was held that the sum of pound 94,000 was received by the respondent of that case not under the contract of employment nor as remuneration for services rendered or to be rendered but as compensation for giving up a right to remuneration. We are unable to see how that decision is of any help to the appellant in the present case. It seems clear to us that in the present case the appellant has surrendered no rights under the contract; what has been paid to him has been paid under the terms of contract and as salary which he would have earned if twelve months' notice had been given to him. As no notice was given he was treated as though he was in service and entitled to salary for twelve months and that was what was paid to him. It is difficult to see how such payment can be treated as compensation for loss of office.

The present case is similar to the two cases of Henry v. Arthur Foster and Henry v. Joseph Foster [1932] 16 Tax Cas. 605 and Henry's Case (supra) and different from the case of Hunter v. Dewhurst (supra). In the first two cases the respondents were directors of a limited company. They had no written contracts of services with the company but Article 109 of the company's articles provided that in the event of any director who held office for not less than five years, dying or resigning or ceasing to hold office for any cause other than misconduct, bankruptcy, lunacy or incompetence, the company should pay to him or his representatives by way of compensation for loss of office a sum equal to the total remuneration received by him in the preceding five years. The respondents resigned office as director in these two cases and received from the company as "compensation" a payment calculated in accordance with Article 109. It was held by the Court of Appeal that the payment constituted a profit of the office of Director and was properly assessable to income-tax. Lord Hanworth, M. R. said at page 629 :

> *"Now it is argued that those sums which became payable under the terms recorded in article 109 were compensation for the loss of office. Is that the substance of the matter? When a man has died he is not compensated for the loss of his life if he resigns voluntarily', why should he be paid compensation for the loss of his office? It would seem as if those words were put in in view of the possibility thereunder of escaping the charge to tax ; but, as I have said, we, have got to look at the substance of the matter, and the substance of this payment is this : It is contemplated as a part of the remuneration of the Director payable to him, and estimated according to his service during a certain time, and in addition to the amount paid to him under clause 104, there shall be estimated a sum which is to fall to be paid to him under clause 109."*

Lawrence L. J. said at page 632 :

> *"'In my judgment, the determining factor in the present case is that the payment to the Respondent whatever the parties may have chosen to call it was a payment which the company had contracted to make to him as part of his remuneration for his services as a director. It is true that payment of this part of his remuneration was deferred until his death or retirement or cesser of office, and that in the articles it is called "compensation for loss of office." It is, however, a sum agreed to be paid in consideration of the Respondent accepting and serving in the office of Director, and consequently is a sum paid byway of remuneration for his services as Director."*

It seems to us that the same principle should apply in the present case. What has been paid to the appellant is his salary in lieu of notice. If that is the true position then the amount paid is taxable under s.7 of the Indian Income- tax Act, 1922. It is not compensation for loss of employment within the meaning of Explanation 2 thereto."

20. Respectfully following the above said decision and the ratio laid down by the Hon'ble Supreme Court in the above case, we are inclined to

treat the compensation received by the assessee as only salary received in advance. Therefore, we direct the Assessing Officer to allow the claim of the assessee u/s. 89 r.w. Rule 21A of I.T. Rules. Accordingly, the appeal filed by the assessee is allowed.

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

Order pronounced in the open court on 22.04.2022

Sd/-	Sd/-
(AMARJIT SINGH)	**(S. RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai / Dated 22/04/2022
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file. //True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum