

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH : "DEHRADUN SMC" NEW DELHI]**

BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 33/DDN/2020 (A.Y 2016-17)

Puran Singh Negi B-109, HMT Colony Amritpur Nainital, Uttarakhand, Haldwani PAN No. AALPN0525A (APPELLANT)	Vs.	ACIT, Circle : 3, Nainital. (RESPONDENT)
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Assessee by	Shri Manoj Joshi, CA
Department by	Sh. Mayank Prabha Tomar, Addl. CIT

Date of Hearing	14.12.2022
Date of Pronouncement	04.01.2023

ORDER

PER YOGESH KUMAR US, JM

This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals), Golapur Kathgodam 263126 [hereinafter referred to CIT (Appeals) dated 31/07/2020 for assessment year 2016-17.

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

1. *That on facts and in law the order of assessment dated 07.09.2018 passed by ACIT, Circle-3, Nainital (hereinafter referred to as AO) and impugned Appellate Order dated 31.07.2020, passed by CIT(A) Haldwani (herein after referred to as CIT(A), Haldwani are bad in law and void ab initio.*

1.1 *That on the facts and in law the CIT(A) has erred in violating principals of natural justice rendering orders passed by them as bad in law and void ab initio*

2. *That on the facts and in law the CIT(A) has erred in disallowing Rs 2,41,874, claimed under Sec 89(1), in holding that relief could not be sought for arrears of salary or receipt of salary in advance, when relief was claimed under Sec 10(10)C (on account of amendment in Law)*

2.1 *That on the facts and in law the CIT(A) has erred in disallowing Rs 2,41,874, as the amount had not been received as Salary in advance, but was a lumpsum settlement for the future service, under a Voluntary Separation Scheme, to relieve all the permanent employees of the Company, (severing the employer employee relationship) approved by the Govt, of India*

2.2 *The Scheme was not voluntary, since there was included a clause that employees who did not opt for PS5 would be retrenched under the Industrial Disputes Act, 1947.*

2.3 *For computation of the onetime settlement, the period of service considered was completed service and left over service.*

2.4 *Sec 10.(10)C, applies to a scheme of voluntary separation. The ONE TIME SETTLEMENT was not voluntary.*

3.1 *That on facts and in law the AO has erred in not allowing the total deduction of Rs 9,65,429/ allows by the Ld CIT(A) and restricting the relief to Rs 5,00,000. The CIT(A) has accepted the claim of the assessee for exemption of Rs 965,429/ received as Gratuity*

4. *CBDT Circular No.8/2019 dated 26th December,2018...amendments to Sec 28 wef 1.04.2019 applicable to AY 2019.20 and subsequent Assessment years quoting Taxability of compensation in connection to business or employment*

13.1 *Before amendment by the Act, the provisions of section 28 of the Income-tax Act provided that certain types of compensation receipts shall be taxable under the head "Profits and gains of business or profession". However, the scope of this section was restrictive since it did not cover a large segment of compensation receipts in connection with business and employment , leading to base erosion and revenue loss.*

13.2 *Accordingly, section 28 of the Income-tax Act has been amended to provide that any compensation received or receivable, by any person, whether revenue or capital, in connection with the termination or the modification of the terms and conditions of any contract relating to his business shall also be taxable under the head "Profits and gains of business or profession".*

Further, section 56 of the Income-tax Act has also been amended to provide that any compensation received or receivable by any person, whether in the nature of revenue or capital, in connection with the

termination or the modification of the terms and conditions of any contract relating to his employment shall be taxable under the head "Income from other sources". Consequential amendment has also been made in clause (24) of section 2 of the Income-tax Act.

13.3 Applicability: These amendments takes effect from 1st April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent assessment years.

5. Your Honour, the compensation received as ONE TIME SETTLEMENT was taxed in the AY 2016.17. Reading the above explanation to the amendment, the lump sum compensation would be exempt, prior to enactment of the above amendment, wef. 1.04.2019

If your Honour accepts the plea for 100% exemption of the ONE TIME SETTLEMENT, being a lump sum settlement, then can the Honourable Sir, guide remand for the re assessment of the ITR for 100 % exemption

6. If Law cannot permit the above , then we request the Honourable Bench to extend the exemptions the assessee is due for and discharge the Demand raised by the Ld.AO

The appellant craves for leave to add, alter, amend and / or modify any of the grounds of appeal before or at the time of hearing the Appeal.”

3. There is a delay of two months in filing the present appeal. The Ld. AR has filed an application for condoning the delay on the reason that, due to covid situations the appeal could not be filed on time and Assessee being a heart patient and was in the area of quarantine. Considering the reasons assigned in the application, the delay in filing the present appeal is condoned.

4. Brief facts of the case are that, the assessee filed return for the Assessment Year 2016-17 declaring NIL income. Subsequently, the assessee has filed revised return declaring total income of Rs. 37,17,350/- (after availing deduction under Chapter VI (A) the revised return was selected for limited scrutiny and the notice u/s 143(2) was issued. The scope of the scrutiny was limited and the reasons for selection for scrutiny are (i) increase in TDS/TCS claim in the revised return & (ii) large relief claimed u/s 89 of the Act. Subsequently the notice u/s 142(1) of the Act was issued. The assessment order dated 07/09/2018 came to be passed wherein the Ld. A.O. found that the Assessee's third computation of income claiming relief u/s 89 of the Act to the tune of Rs. 2,41,874/- was found to be in order and further found that the assessee has wrongly claimed relief in the revised ITR to the tune of Rs. 5,64,487/- accordingly, the excess relief claimed u/s 89 of the Act to the tune of Rs. 3,22,613/- has been disallowed.

5. Aggrieved by the assessment order dated 07/09/2018, the assessee has preferred an appeal before the CIT(A) and the Ld.CIT(A) vide order dated 31/07/2020 disallowed Rs. 2,41,874/- claimed u/s 89 (1) of the Act holding that relief could not be sought for arrears of salary or receipt of salary in advance when relief was claimed u/s 10(10C) of the Act.

6. Aggrieved by the order of the Ld.CIT(A) the assessee has preferred the present appeal on the grounds mentioned above.

7. We have heard the parties perused the material available on record and gave our thoughtful consideration.

8. The assessee had been employee of HMT Watches Ltd. retired from service on 29/02/2016 and received retirement benefit. At the time of filing the original return, the assessee did not receive Form No. 16 from his employer. The assessee has originally filed return of income within due date declaring NIL income and claimed NIL TDS. Subsequently, the assessee filed

revised return of income declaring total income of Rs. 37,17,350/- by claiming TDS of Rs. 8,22,694/-, the assessee had also claimed relief to the tune of Rs. 5,64,487/- in the computation of income. In support of the said claim, the assessee has furnished Form No. 10E and detailed calculation of the relief claimed. On verification of the calculation, the A.O. was of the opinion that the assessee had claimed excess relief over the admissible amount. The AR of the assessee filed revised computation of income in which relief was reduced to Rs. 4,80,720/- wherein the assessee had also claimed exemption u/s 10(10C) of the Act of an amount of Rs. 5,00,000/-. Thus, as per the revised computation the total income of the assessee was reduced to Rs. 32,17,350/- (in place of Rs. 37,17,350/- as disclosed in the revised return). The Ld. A.O. has once again was of the opinion that there was a mistake in calculating the amount of relief claimed u/s 89 at Rs. 4,80,720/-. The Ld. A.O. of the opinion that the claim of exemption u/s 10(10C) of the Act to the tune of Rs. 5 lacs would not be allowed as the same had not been claimed by way of filing return of income.

9. The assessee furnished yet another computation of income in which the assessee claimed relief u/s 89 of the Act to the tune of R. 2,41,874/-. The said claim of the assessee was found to be in order by the Assessing Officer. Hence, excess relief claimed u/s 89 of the Act to the tune of Rs. 3,22,613/- was disallowed. Accordingly, income of the assessee was assessed at Rs. 38,67,996/- against the returned income as per the revised return of income at Rs. 37,17,350/-. The Ld.CIT(A) by considering the relevant provision u/s 10(1) & 10(10C) of the Act, found that claim made by the assessee is genuine and based on bonafide ground even if the same could not be made in the return of income, further, directed the A.O. to allow the admissible claim as envisaged u/s 10(1) & u/s 10(10C) of the Act.

10. In so far as issue of relief u/s 89 of the Act, the Ld.CIT(A) restricted amount of Rs. 2,41,874/- as relief, considering amended provisions of Section 89 & Section 10(10C) of the Act, the said claim of the assessee is held to be not allowable. The Ld. CIT(A) has considered the amended provision to Section 10(10C) and Section 89 and further also considered CBDT Circular No. 20/2015 which is w.e.f. 01/04/2010 with insertion of proviso to Section 89, wherein no exemption shall be allowed to the assessee if any relief has been allowed u/s 10(10C) of the Act for any Assessment Year in respect of the amount received or receivable on voluntarily retirement or termination of service.

11. Considering the above facts that the assessee could not claim relief u/s 10 (10B) at the time of filing of return which has been ultimately resulted in passing the order impugned, in our considered view, if the assessee be given the benefit of exemption u/s 10 (10B) of the Act and no other Exemption under Chapter III is allowed, the substantial justice would be rendered. Therefore, we direct the A.O. to give the exemption u/s 10 (10B) of the Act in accordance with law.

12. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Open Court on : 04.01.2023.

**Sd/-
(B. R. R. KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Dated : 04/01/2022

R. N, Sr. PS

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI