

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 174/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

Rajiv Venkataraman, Assistant Commissioner
Secunderabad Vs. of Income Tax,
[PAN No. AANPR4584M] Circle-2(2),
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri J. Prabhakar, AR
राजस्व द्वारा/Revenue by: Shri Kumar Aditya, DR

सुनवाई की तारीख/Date of hearing: 26/06/2023
घोषणा की तारीख/Pronouncement on: 05/07/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 09/02/2023 passed by the learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Venkatraman Rajiv ("the assessee") for the assessment year 2017-18, assessee preferred this appeal.

2. Brief facts are that, assessee filed the return of income on 05/08/2017 basing on the entries in Form No. 26AS. There was a difference in the amounts mentioned in Form No. 26AS and the income disclosed in the return of income filed by the assessee. Insofar as this appeal is concerned, it relates to the sum mentioned as other sources to the tune of Rs. 2,52,352/-. This amount comprises of Rs.27,352/- added on the ground that the assessee did not fill in schedule PTI in the return of income and Rs. 2.25 lacs said to have been received by the assessee towards survival benefit from LIC on a single premium policy.

3. While processing the return of income, these two sums were added to the income of the assessee. Assessee filed an application for rectification showing the and claiming exemption of Rs.2.25 lacs, and also explaining the difference in respect of Rs. 27,352/-. Such an obligation of the assessee was rejected by CPC.

4. Assessee, therefore, preferred appeal before the Ld. CIT(A). Ld. CIT(A) accepted the explanation of the assessee in respect of Rs.27,352/- and granted relief to such an extent. Ld. CIT(A), however, recorded that the assessee had shown exempt income of Rs. 72,40,321/- in the return of income, but the same was not increased to Rs. 74,65,321/- in the rectification application by showing Rs.2.25 lacs as a survival benefit received from LIC on single premium policy as 'exempt income', but the rectification application that was filed on 25/06/2020 was showing the corrected return of income. Since the claim of exempt income of Rs.2.25 lacs was made for the first time to the rectification application, Ld. CIT(A) held that the same is impermissible in law and accordingly rejected the same.

5. Assessee is therefore, before us in this appeal contending that it is quite incorrect on the part of the Ld. CIT(A) to say that an exempt income cannot be brought on record by way of a rectification application, because such a claim of the assessee does not alter the total income returned

initially. According to the learned AR, the assessee filed the revised XML after downloading fresh copy of Form 26AS on 25/06/2020 which tantamount to a revised return, but it treated as rectification application by the CPC and it should be noted that the software of the Department does not permit filing a revised XML which bridges the arithmetic consistency of the total income returned and what the assessee attempted was to disclose the nature of income, but not taxable. Learned AR submits that there is no legal compulsion to disclose non-taxable receipts vis-à-vis the exempt income for which a columnist provided in the return form.

6. Learned AR further submits that in view of the decision of the Hon'ble Apex Court in the case of NTPC vs. CIT (1998) 229 ITR 383 and Goetze (India) Ltd vs. CIT (2006) 284 ITR 323 (SC) it is always open for the assessee to raise the points of law even before the appellate authorities, when consideration thereof does not require any new documents or introduction of new facts. He further submitted that it is always open for the First Appellate Authority to consider a claim permissible under law preferred by the assessee otherwise than by filing a revised return.

7. Per contra, it is the submission of the learned DR that the assessee preferred the claim relating to the exempt of income of Rs. 2.25 lacs first time by way of an application for rectification and since no revised return of income was filed such a claim was rightly rejected by the CPC, and the assessee cannot have any grievance, because not considering what was not there on record cannot be said as mistake apparent on record. He accordingly justifies the orders of the authorities below.

8. We have gone through the record in the light of the submissions made on either side. It is an undisputed fact that the assessee filed an application on 25/06/2020 wherein the corrected return of income was filed and claim of exempt income of Rs.2.25 lacs was made. Ld. CIT(A), however, did not consider the request of the assessee on the ground that the assessee had shown the exempt income at Rs. 72.40 lacs in the return

of income but did not increase the same to Rs. 74.65 lacs in the rectification application when the claim for exempt income of Rs. 2.25 lacs was made. Ld. CIT(A) did not consider the request of the assessee, because in the original return of income there is no reference to the exempt income of Rs. 2.5 lacs. According to the Ld. CIT(A), preferring such a claim for the first time and not by way of a revised return but by way of rectification application is impermissible in law.

9. Hon'ble Apex Court in the case of NTPC vs. CIT (supra) held that it is open for the assessee to raise the points of law even before the appellate authorities, when consideration thereof does not necessitate any enquiry into the facts or calling for any fresh evidence. In this case, according to the assessee Form 26AS does not refer to the income of Rs. 2.25 lacs received by the assessee towards survival benefit received from LIC on a single premium policy. It is not the case of the Revenue that such a receipt is not exempt income. Only point for consideration of such a plea by the assessee is that the assessee preferred the same by way of letter dated 25/06/2020. Since the plea of the assessee that such a receipt is an exempt income, is purely a question of law, and does not require calling for any fresh evidence, there is no legal impediment for the Ld. CIT(A) to consider the same.

10. With this view of the matter, we are of the considered opinion that interest of justice demands that the plea taken by the assessee through letter dated 25/6/2020 as to the nature of receipt of Rs. 2.25 lacs from LIC as survival benefit on a single premium policy, being a pure question of law, requires consideration; lest it would amount that an exempt income is brought to tax.

11. In this peculiarity of facts, we set aside the impugned order and rest of the issue to the file of the jurisdictional Assessing Officer to verify whether the nature of the impugned receipt of Rs.2.25 lacs is received towards survival benefit received from LIC on a single premium policy. If it

is so, it is an exempt income. The grounds of appeal are accordingly treated as allowed for statistical purpose.

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

Order pronounced in the open court on this the 5th day of July, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 05/07/2023

TNMM

Copy forwarded to:

1. Shri Rajiv Venkataraman, B-198, 4th Avenue, Sainikpuri, Secunderabad.
2. Asst. Commissioner of Income Tax, Circle-2(2), Hyderabad.
3. DR, ITAT, Hyderabad.
4. GUARD FILE.

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ITAT, HYDERABAD