

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस०एम०सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एस. रिफौर रहमान, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
आसं. 1914/मुं/2023 (नि.व. 2002-2003)
ITA NO.1914/MUM/2023 (A.Y.2002-03)

Henrietta Maria Pereira,
B/602, Vintage CHS LTD, IC Colony,
Borivali (West), Mumbai – 400 103
PAN: AKUPP5344E

..... अपीलार्थी/Appellant

बनाम Vs.

Deputy Commissioner of Income Tax, Circle -17(1),
Room No.117/135,
Aaykar Bhavan, M.K.Road,
Mumbai – 400 020

.....प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Jitendra Singh
प्रतिवादी द्वारा/Respondent by : Shri H.M.Bhatt
सुनवाई की तिथि/ Date of hearing : 14/09/2023
घोषणा की तिथि/ Date of pronouncement : 18/09/2023

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 31/03/2023, for the Assessment Year 2002-03.

2. Shri Jitendra Singh appearing on behalf of the assessee submitted that the assessee in appeal has raised two issues. The first issue (Ground No.2) is a legal ground challenging validity of reassessment proceedings. The second issue (Ground No.3) is challenge to addition/disallowance on merits i.e.

disallowance of exemption claimed u/s. 10(10C) of Income Tax Act, 1961 [in short 'the Act'] r.w.r. 2BA

3. The Id. Counsel for the assessee submitted that the reassessment proceedings are bad and are liable to be quashed as no addition has been made in the reassessment order for which case of the assessee was reopened. He referred to the reasons recorded for reopening at page 33 of the paper book. He pointed that a perusal of the reasons for reopening would show that the assessment for assessment year 2002-03 was reopened on two counts: (i) HRA claimed by the assessee is not admissible; and (ii) the vehicle expenses claimed by the assessee needs verification. The Assessing Officer while passing the assessment order dated 31/03/2005 passed u/s. 143(3) r.w. 147 of the Act has not made addition on either of the two reasons mentioned above. The addition has been made by disallowing assessee's claim u/s. 10(10B) of the Act. He submitted that the case of the assessee is squarely covered by the decision rendered in the case of CIT vs. Jet Airways (India) Ltd., 331 ITR 236 (Bom).

4. Per contra, Shri H.M.Bhatt representing the Department vehemently defended the assessment order and the order of CIT(A). He submitted that the addition has been made u/s.10(10B) of the Act. A perusal of the reasons would show that the Assessing Officer has questioned exemption claimed u/s. 10 of the Act. He pointed that the Assessing Officer may not have specifically mentioned sub-section (10B) of the Act, however, he has made reference to section 10 of the Act in the reasons. Therefore, it would be wrong to say that no addition has been made on the reasons for which assessment has been reopened.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. Before we proceed to decide the legal ground raised by

the assessee, it would be imperative to refer to the reasons for reopening. The same are reproduced here in below:

“ Return of income has been filed by assessee on 31.7.2002 declaring Total income of Rs.13,13,732/-. Return was processed u/s.143(l) of the I.T.Act.

Assessee has claimed exemption of allowances u/s.10 of Rs.9,95,262/-. This includes HRA of Rs.27,623/-. As per return filed by assessee, assessee has claimed set off of property loss of Rs.14,2547- for interest paid on Housing Loan. Since, assessee is owner of House property and already claimed interest paid on loan as exemption. Hence, HRA is not admissible to the assessee.

It is also seen that assessee has offered income from business and profession and offered Rs. 54,137/- as income of the business and profession, and deducted Rs.1,55,965/- against the gross receipt of' Rs.2,10,102/-. The assessee is employee of the bank and he cannot run any business on profession. The expenses debited to Profit and Loss Account do not give any genuine expenditure. Hence, this also needs verification. Assessee has not given any details by which vehicle insurance and vehicle expenses can be verified.

For the above mentioned reason, I have reason to believe that the -income chargeable to tax has escaped assessment, within the meaning of sec. 147 explanation.”

A reading of the aforesaid reasons for reopening would show that the assessment for assessment year 2002-03 in the case of assessee was reopened to disallow: (i) HRA claimed by assessee; and (ii) To verify expenditure towards vehicle insurance and vehicle expenses debited to the Profit & Loss Account. However, while passing the assessment order the Assessing Officer has made addition of Rs.5,00,000/- in respect of disallowance u/s. 10(10B) of the Act. No other addition or disallowance has been made by the Assessing Officer. It is no more res-integra that if, no addition is made in re-assessment proceedings based on reasons recorded for reopening, addition on any other reasons cannot be made. The ratio laid down by the Hon'ble Jurisdictional High Court in the case of CIT vs. Jet Airways (India) Ltd. (supra) squarely applies on the facts of the instant appeal.

6. The Id. Departmental Representative has pointed that section 10 of the Act has been mentioned in the reasons for reopening although without specific sub-section, hence, the addition/ disallowance made u/s. 10(10B) of the Act is in consonance with the reasons for re-opening. We are not in agreement with this argument. A perusal of reasons would show that the Assessing Officer has categorically questioned assessee's claim of HRA. The provisions of HRA are contained in section 10(13A) of the Act, therefore, the reference to section 10 in reasons is with reference to HRA. Whereas, the Assessing Officer has made disallowance u/s. 10(10B) of the Act, that deals with compensation received under Industrial Dispute Act, 1947. We find no merit in the argument of Id. Departmental Representative. Ergo, in facts of the case and the settled legal position, we hold the re-assessment proceedings bad in law, hence, quashed.

7. Since, we have decided the jurisdictional issue raised in ground No.2 in favour of assessee, ground No.3 raised in the appeal challenging addition on merits has become academic.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on Monday the 18th day of September, 2023.

Sd/-

(S.RIFAUR RAHMAN)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 18/09/2023
Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/ The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्तCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई/DR, ITAT, Mumbai
- 5.. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai