

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

डॉ. मनीष बोराड, लेखा सदस्य
एवं
श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष

Before

**DR. MANISH BORAD, ACCOUNTANT MEMBER
&
SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No.: 736/Kol/2023
Assessment Year: 2011-12**

***Anirban Chowdhury.....Appellant
[PAN: AFUPC 0181 P]***

Vs.

ITO, Ward-24(3), Hooghly.....Respondent

Appearances:

Assessee represented by: Sh. Somnath Ghosh, Adv.

Department represented by: Sh. Sanjoy Paul, D/R.

Date of concluding the hearing : November 9th, 2023

Date of pronouncing the order : November 29th, 2023

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2011-12 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)- NFAC, Delhi [in short Id. 'CIT(A)'] dated 22.05.2023 arising out of the assessment

order framed by the Assessing Officer (in short ld. 'AO') u/s 154/143(3) of the Act dated 31.07.2015.

2. The assessee is in appeal before the Tribunal raising the following grounds:

“1. FOR THAT the Ld. Commissioner of Income Tax (Appeals), N.F.A.C. failed to appreciate that none of the conditions precedent existed and/or have been complied with and/or fulfilled by the Ld. Income Tax Officer, Ward 24(3), Hooghly for his alleged assumption of jurisdiction u/s. 154 of the Income Tax Act, 1961 and the specious order dated 31-07-2015 passed u/s. 154/143(3) of the Act in pursuance to the impugned notice dated 02-07-2015 issued thereunder is therefore ab initio void., ultra vires and ex-facie null in law.

2. FOR THAT the Ld. Commissioner of Income Tax (Appeals). N.F.A.C. was wholly in error in upholding the purported denial of deduction to the extent of Rs. 40,160/- on account of Sumptuary Allowance for computing the income from Salary by the Ld. Income Tax Officer, Ward 24(3), Hooghly within the scope of s. 154 of the Act and the specious conclusion reached on that behalf is completely unfounded, unjustified, and untenable in law.

3. FOR THAT the Ld. Commissioner of Income Tax (Appeals), N.F.A.C. was absolutely in error in upholding the impugned disallowance of deduction claimed in respect of the sumptuary allowance to the extent of Rs. 40,160/- by the Ld. Income Tax Officer, Ward 24(3), Hooghly misreading the C.B.D.T. Circular No. 35/32/66-IT(B), dated 24-9-1966 and his purported findings on that behalf basing on extraneous parameters not germane to the issue in dispute is wholly illegal, illegitimate, and infirm in law.”

3. Perusal of the above grounds reveals that the grievance of the assessee is two-fold, firstly, whether ld. AO was justified in assuming jurisdiction u/s 154 of the Act for denying the deduction of sumptuary allowance at Rs. 40,160/- and secondly, whether sumptuary allowance is taxable.

4. We have heard rival contentions and perused the records placed before us. We observe that the assessee is an individual and is an employee under the West Bengal Judicial Services. Income of Rs. 9,41,404/- declared in the revised return of income furnished on 17.10.2011 and after the case being selected for scrutiny through CASS returned income was accepted and assessed income vide order u/s 143(3) of the Act dated 06.11.2013. Later on, ld. AO passed rectification order u/s 154 of the Act and added the sumptuary allowance of Rs. 45,160/- which was claimed exempt by the assessee in the return and after allowing the deduction 16(ii) of the Act at Rs. 5,000/- income was revised at 9,81,564/-.

5. The assessee challenged the said action of the AO but on account of his failure to appear before ld. CIT(A) *ex-parte* order was framed. Before us, ld. Counsel for the assessee firstly contended that the rectification made by the AO in the order u/s 154 of the Act is not an apparent mistake. Therefore, assuming of jurisdiction to make such adjustment is not valid.

6. We however, observe that ld. AO has referred to the CBDT instruction dated 24.09.1966 in order to treat sumptuary allowance as entertainment allowance and made the said adjustment. Since the facts relating to sumptuary allowance is appearing in the revised return itself and it was not any new information but for computing the correct income and also for rectifying the apparent mistake committed while framing the assessment, ld. AO has made the said adjustment u/s 154 of the Act. We are therefore, of the view that legal issue raised by ld.

Counsel for the assessee has no merit and hence, ground nos. 1 & 2 are accordingly dismissed.

7. So far as merits of the case are concerned, we observe that Id. Counsel for the assessee has relied on the decision of the Coordinate Bench of ITAT Jaipur in the case of *Shri Ajay Godara vs. ITO* in ITA No. 614/JP/2016 order dated 19.06.2018 wherein similar issue of sumptuary allowance was for consideration and this Tribunal held that sumptuary allowance is exempt from payment of tax observing as follows:

"11. We have considered the rival submissions as well as the relevant material on record. The Id. CIT(A) has rejected the claim of the assessee on the ground that the assessee has not brought on record any section, notification, circular etc. as issued by the CBDT. We find that the CBDT vide letter No. 35/32/66-IT(B), dated 24-9-1966 has made it clear that sumptuary allowance has to be treated as an entertainment allowance and accordingly, the said allowance received by a person who is in receipt of salary from the Government, to the extent of such allowance are required to be deducted in computing the income chargeable under head salaries U/s 16(ii)(a) Thus, the CBDT circular has clarified that this allowance may be regarded as entertainment allowance and exempt from payment of income tax. For ready reference we reproduced the said letter of CBDT as under:-

"Section 17 of the Income Tax Act, 1961- salary perquisite and profits in lieu of salary- sumptuary allowance being in the nature of entertainment allowance not to be included in term "salary" for the purpose of determining perquisite value of residential accommodation under Rule 3(a) of Income Tax Rules.

Letter F. No. 35-32/66-IT(B), Dated 24-9-1966

According to the Board's instruction "sumptuary allowance" has to be treated as an entertainment allowance. In view of this, the sumptuary allowance received by a person, who is in receipt of salary from the Government, to the extent that such allowance is required to be deducted in computing the income chargeable under the head "Salaries" under section 16(ii)(a), may be regarded as an allowance

exempted from payment of income-tax. Allowance in the nature of entertainment allowance, to the extent such allowance is deductible under clause (ii) of section 16 is excluded from the term "salary" under Explanation (2)(iv) [as it stood before the amendment made by the Income-tax (Amendment) Rules, 1974], to rule 3(a) of the Income-tax Rules, and, therefore, sumptuary allowance may not be included in the term "salary" for the purposes of said rule."

In view of the above CBDT clarification we hold that the Sumptuary allowance is exempt from payment of income tax and accordingly to be excluded as a deduction while computing income under the head salary."

8. Since the issue raised on merit is squarely covered by the decision of Coordinate Bench of ITAT Jaipur in the case of *Shri Ajay Godara (supra)* and ld. D/R failed to bring on record any decision in favour of the Revenue, we are inclined to hold in favour of the assessee and delete the addition of Rs. 40,160/- and allow ground no. 3 raised by the assessee.

9. In the result, the appeal filed by the assessee is partly allowed.

Kolkata, the 29th November, 2023

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Manish Borad]
Accountant Member

Dated: 29.11.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Anirban Chowdhury, C/o. S.N. Ghosh & Associates, Advocates, Sagar Mansion, 2, Garstin Place, 2nd Floor, Suite Nos. 202 & 203, Hare Street, Kolkata-700 001.**
- 2. ITO, Ward-24(3), Hooghly.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata