



IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR BENCH NAGPUR



BEFORE HON'BLE SHRI S. S. GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

(Virtually from ITAT, Pune)

आयकर अपील सं. / ITA No. 228/NAG/2023

निर्धारण वर्ष / Assessment Year : 2017-18

Ravindra Madhukar Kharche,  
602, Nilgiri Himalaya Empire,  
Phulmati Layout, Badikheda, Nagpur.  
PAN: ACKPK1961E

..... अपीलार्थी / Appellant

बनाम / V/s

Asstt. Commissioner of Income Tax,  
Circle-Chandrapur.

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : None

Revenue by : Mr Abay Marathe [Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 26/03/2024

घोषणा की तारीख / Date of Pronouncement : 16/04/2024

**ORDER**

**PER G. D. PADMAHSHALI, AM;**

The present appeal of the assessee is filed challenging DIN & order No. ITBA/NFAC/S/250/2023-24/1053289950(1) dt. 29/05/2023 passed u/s 250 of the Income-tax Act, 1961 [in short 'the Act'] by National Faceless Appeal Centre, Delhi [in short 'NFAC'],

2. Pithily stated facts of present case are that;

2.1 The assessee an individual and was an employee of Maharashtra State Electricity Generation Company Ltd [in short 'MSEGCL'], a State Government of Maharashtra [in short 'GoM'] owned company, wherefrom the assessee retired on



31/05/2016. Declaring total income of ₹44,68,490/- with NIL tax liability the assessee filed his original return of income [in short 'ITR'] which subsequently was revised claiming tax refund of ₹3,09,000/- owing to upward revision of claim of exemption of Gratuity to ₹20Lakhs as against original claim of ₹10Lakhs. The said ITR was initially processed u/s 143(1) of the Act and later subjected to complete scrutiny by a notice served u/s 143(2) of the Act.

2.2 While framing assessment u/s 143(3) of the Act, the Ld. AO made two additions viz; (a) addition of ₹10 Lakhs arising on account of restricting the claim of exemption of gratuity to ₹10 Lakhs u/c (ii) of section 10(10) of the Act as against the claim of ₹20 Lakhs made in revised ITR. (b) addition of ₹21,550/- being difference of interest income offered to tax as against the income reported in form 26AS. The assessee did not challenge the disallowances and the consequential additions in appeal.

2.3 Pursuant to aforesaid disallowance/additions, the Ld. AO initiated penal proceedings for misreporting of income u/s 270A of the Act and after considering the submission of the assessee, by a DIN & order ITBA/PNL/F/270A/2021-22/1041650935(1) dt. 26/03/2022 imposed a penalty of ₹6,02,858/- @ an accelerated rate of 200% of tax sought to evaded u/s 270A(8) of the Act.

2.4 The first appeal against the aforesaid imposition did fail to settle dispute in favour of the assessee, for the reasons the assessee came in present appeal on a solitary ground that the levy of penalty is devoid of facts, merits of the case and without considering the bonafied mistake in claiming enhanced ceiling.



3. The case was called twice; none appeared at the bequest of the assessee, in absence of any letter seeking adjournment, we deem it fit to proceed to adjudicate the matter *ex-parte* on merits u/s 24 of the ITAT-Rules, 1963. Heard the Ld. DR and perused case records in the light of rule 18 of ITAT, Rules 1963 and considered the facts in the light settled legal position.

4. Insofar as incorrect reporting of interest income is concerned, it is on record that, as on the date of filing of return the amount of interest earned as appearing in Form No 26AS has been rightly offered to tax. As such the difference in interest income came to light post filing of ITR and on account of delayed reporting by the deductor/payer bank/Financial Institution. In view thereof in our considered view same cannot tantamount to under-reporting of income, consequently *de-horses* from attracting any penalty u/s 270A of the Act.

5. Insofar as the penalty imposed against disallowance of enhanced claim of gratuity exemption is concerned, we observed that, the appellant assessee was in service previously with Maharashtra Electricity Board [in short 'MSEB'] which was constituted in 1960 & operating under the direct control of GoM. Owing to reforms by virtue of amendment brought in Electricity Act, 2003 the erstwhile MSEB demerged its three principal activities i.e. generation, transmission and distribution through restructuring and assigned it to three newly formed companies for the stated purpose. The appellant's employer MSEGCL is one of such company engaged in generation of electricity, from which the appellant assessee received afforested gratuity in terms of MSEGCL employee service regulation, 2005.



6. Undisputedly, the appellant joined his services with MSEB as GoM employee, however owing to its restructuring his employer became State owned PSU company i.e. MSEGCL from which the appellant ultimately retired. In stricter sense, the appellant rendered part of his service tenure as State Government employee and balance part of it was as an employee of PSU. This coupled with CBDT notification dt. 08/03/2019 issued enhancing exemption ceiling ₹20 Lakhs led to his bonafied belief in claiming extended exemptions in the revised ITR. The Ld. AO however stand corrected the claim by restricting the exemption to maximum ceiling ₹10Lakhs as available to non-government employee and is very well accepted by the appellant by discharge of determined taxes. In view of the acceptance of addition made on account of disallowance of enhanced claim of exemption, the tax authorities levied penalty u/s 270A @ accelerated rate of 200% of tax sought to be evaded for mis-reporting of income through excess claims made in the revised ITR filed.

7. Though we are not dealing with the correctness of disallowance whereby the exemption claims were restricted to the extent of maximum ceiling fixed in relation to non-government employees, but it would not be out of the box to state that, insofar as the gratuity is concerned, undisputedly it was accrued to the appellant evenly throughout his service tenure. Therefore, the portion of gratuity which is accrued to him from the year of joining his services with MSEB upto the year of transfer of his service to MSEGCL was entitled to full exemption being Government Service. The balance gratuity thus represents accrued from MSEGCL being non-governmental service which alone can only be subjected to ceiling limit



prescribed u/s 10(10)(ii) of the Act. However, the tax authorities have perfunctory pressed into service the ceiling without first analysing the facts holistically while dealing with assessment. In the penalty proceedings there were indifferent in dealing with the matter.

8. Having considered facts and circumstance of the case, levy of penalty in this case in our considered view was not warranted for the reasons that; (i) admittedly for part of the service the appellant was State Government employee whose employment by enforcement of electricity Act, 2003 and MSEGCL employee Service Regulation 2005 was converted into non-governmental service/employment. Therefore, the belief under which full/extended exemption of retirement benefit claimed in the ITR filed was in first not incorrect in its entirety and certainly it was bonafied and not synthetic one (ii) secondly, the explanation offered by the appellant in support of his mistaken but bonafied belief and disclosed all material facts of his service & the circumstance which swayed to claim full exemption in his ITR in our considered view squarely falls within clause (a) of s/s (6) of section 270A of the Act, therefore pardonable (iii) and finally, the imposition of penalty is at the discretion of Ld. AO, since s/s (1) of section 270A of the Act, refers to the word 'may' and not as 'shall'. However, the tax authorities below in our considered view were failed to appreciate the facts and circumstance of the present case holistically and further in right spirit of law, but dealt therewith without application of mind and perfunctory imposed / confirmed the penalty @ accelerated rate of 200% u/s 270A of the Act in unwarranted case like this. A similar view can also be traced in the decision of co-ordinate bench in **ITA NO. 1388/PUN/2023 AV Wandhekar Vs ITO. Dt. 08/03/2024.**



9. Before parting, it is apt to note here that, the possibility of presence of doubt in the mind of Ld. AO while deciding the ceiling of exemption as to whether status of employment as at the time of joining or at the time of retirement is to be considered, cannot be completely ruled out. However, the Ld. AO disallowed the excess claim of exemption which stands fortified by the Hon'ble Apex Court in '*CCE Vs Calcutta Springs*' [2008] 229 ELT 161(SC) which has been followed subsequently in landmark judgement '*CoC Vs Dilip Kumar & Co*' reported in [2018] 9 SCC 1 (SC) wherein their Hon'ble lordship have held that, '*in case of benefit of doubt or ambiguity in taxing the income, the benefit of doubt goes to State*'. However, in respect of penalty in fiscal laws the principle followed is more like the principle in criminal cases. That is to say the benefit of doubt is more easily given to the assessee, and this finds expounded in '*V V Iyer Vs CC*' [1999] 110 ELT 414 (SC).

10. Respectfully following the former judicial precedents to the case in hand, we deem it proper to set-aside the impugned order of Ld. NFAC and quashed the order of penalty as unwarranted in its entirety. Ordered accordingly.

**11. In result, the appeal of the assessee stands ALLOWED.**

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Tuesday 16<sup>th</sup> day of April, 2024.

**-S/d-**

**S. S. GODARA**  
**JUDICIAL MEMBER**

पुणे / PUNE ; दिनांक / Dated : 16<sup>th</sup> Day of April, 2024.

आदेश की प्रतिलिपि अग्रहित / Copy of the Order forwarded to :

- |                                   |                                 |
|-----------------------------------|---------------------------------|
| 1. अपीलार्थी / The Appellant.     | 2. प्रत्यर्थी / The Respondent. |
| 4. The CIT(A)-NFAC, Delhi (India) | 5. DR, ITAT, Nagpur             |
- Ashwini

**-S/d-**

**G. D. PADMAHSHALI**  
**ACCOUNTANT MEMBER**

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|----------------------------|
| 3. The Pr. CIT Concerned.  |
| 6. गार्डफाइल / Guard File. |

आदेशानुसार / By Order  
वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.