IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER

ITA No.4179/M/2023
Assessment Year: 2017-18

Shri Sandeep Vanjare, Room-105, Madhusudan Chawl-135, P.B. Marg, Worli, Mumbai – 400 013 **PAN: ABVPV8834H**	Vs.	Asst. Commissioner of Income Tax, Circle-34(3), Room No.832, Kautilya Bhavan, BKC, Bandra East, Maharashtra- 400 051
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Ravikant S. Pathak, C.A.
Revenue by : Shri Manoj Kumar Singh, Sr. A.R.

Date of Hearing : 25 . 04. 2024
Date of Pronouncement : 30.04.2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 10.10.2023, impugned herein, passed by the Ld. National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2017-18.

2. In the instant case, during the year under consideration, the assessee claimed to has earned salary in advance to the tune of Rs.84,76,513/- from its former employer namely M/s. Century Textiles and Industries Ltd. and consequently claimed a relief under section 89(1) of the Act read with rule 21A(2) of the IT Rules, 1962. On perusing the claim of the assessee, the Assessing Officer (AO) during the assessment proceedings, show caused the assessee to

explain as to why relief under section 89(1) of the Act should be calculated as per sub rule (2) of Rule 21A of the Rules and not as per sub rule (4) of Rule 21A of the Rules.

The assessee, in response to the show cause notice, submitted his reply and claimed that the assessee has received salary in advance but not any compensation on termination and the determination of nature of income is based on the supplementary agreement dated 15.12.2016 executed between the assessee and its employer M/s. Century Textiles and Industries Ltd., wherein it is clearly stated that amount is paid as salary in advance. It is also a fact that in form No.26AS of the assessee, TDS amount of Rs.25,39,249/- has been deducted under section 192 of the Act on the salary received by the assessee. Even otherwise Form No.16A, issued by the employer of the assessee, also shows that the TDS was deducted by employer under section 192 of the Act. The assessee, before the AO, also submitted the relevant documents/evidence and tried to justify the amount received as salary received in advance but not compensation on termination.

The AO, though considered the aforesaid claim of the assessee, but not found acceptable and ultimately treated the amount received by the Assessee from its employer as compensatory in nature and consequently worked out the relief under section 89(a) of the Act to the tune of Rs.3,18,710/- only as per the provisions of Rule 21A(2) of the Rules resulting into lower relief of Rs.20,71,505/-.

3. The assessee, being aggrieved, challenged the order passed by the AO who vide impugned order dismissed the appeal of the assessee and affirmed the assessment order by holding that the sum claimed to be as “salary in advance” is nothing but a lumpsum ex-gratia in connection with the severance of the employees-

employer relationship towards "full and final settlement" and "no claim towards any further remuneration, compensation, ex-gratia or any other benefits". The assessee, being aggrieved, is in appeal before us.

4. At the outset, the Ld. Counsel of the assessee has claimed that the Hon'ble Tribunal in the identical case of other co-employee titled as Shri Rajesh Santaram Chavan Vs. ACIT, {decided order dated 22.04.2022 in ITA No.1841/M/2021} has also dealt with the identical issue as involved in this case and treated the identical amount received by the co-employee from the same employer as salary in advance and allowed the benefit of the provisions under section 89(1) of the Act read with rule 21A(2) of the IT Rules, 1962.

5. On the contrary, the Ld. D.R. refuted the claim of the assessee and vehemently supported the orders passed by the authorities below. The Ld. D.R. also drew our attention to the supplementary settlement agreement dated 15.12.2016 and submitted that the total dues determined with regard to the assessee was Rs.85,59,835/- and in the agreement the bifurcation of the same is as under:

1. Ex-gratia amount of Rs.60,46,202/-
2. TDS amount of Rs.25,13,633/-

Which goes to show that the assessee has received compensation but not the advance salary as claimed by the assessee.

6. We have given thoughtful considerations to the peculiar facts and circumstances of the case. No doubt the contention of the Ld. D.R. seems to be correct. However, it is a fact that the employer has calculated the salary up to the age of 63 years as per supplementary agreement and given the entire salary amount upto

the age of 63 years without deducting anything and/or reducing the said amount and therefore the ingredients of payment cannot be construed as compensation. Even otherwise, it is not the case of the Revenue Department and/or Assessee that the assessee has been given a lumpsum amount and/or below the salary amount as determined up to the age of 63 years. Further in form No.26AS of the assessee, TDS amount of Rs.25,39,249/- has been deducted under section 192 of the Act on the salary received by the assessee and Form No.16A, issued by the employer of the assessee, also shows that the TDS was deducted by employer under section 192 of the Act. Hence on the peculiar facts in cumulative effects, we are inclined not to accept the contention of the Ld. D.R. to the effects that the assessee has received compensation but not the advance salary as claimed by the assessee.

6.1 We further observe, as claimed by the assessee, that the Hon'ble co-ordinate Bench of the Tribunal in the case of Shri Rajesh Santaram Chavan vs. ACIT (supra), has also dealt with the identical issue in respect of co-employee, relevant part of order is reproduced herein below for clarity and ready reference:

> *"13. Aggrieved with the above order assessee is in appeal before us raising following grounds in its appeal: -*
>
> > *"1. (a) The Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [hereinafter referred as CIT(A)] erred in confirming the action of the AO in re-computing the relief u/s 89(1) of the Act at Rs. 3,05,397/ as against the relief claimed by the Appellant of Rs. 16,74,250/-.*
> >
> > *(b) The CIT(A) erred in confirming the action of the AO in considering the amount of salary received in advance of Rs.59,61,483/- as compensation on termination of employment thereby computing the Relief u/s 89(1) of the Act at Rs. 3,05,397 as per of Rule 21A (4) as against claimed under Rule 21A (2) claimed by the Appellant resulting into lower relief u/s. 89 (1) of the Act by Rs. 13,68,853/-.*

(c) The CIT(A) erred in not appreciating that on the identical sets of facts the co-workers of the company Were allowed full relief claimed u/s 89 of the Act.

The Appellant, on the facts and circumstances of the case and law, submits that he is eligible for relief of Rs. 16,74,250/- under section 89 of the Act; hence, the action of AO/CIT(A) restricting the same to Rs. 3,05,397/- shall be quashed."

14. Ld. AR of the assessee brought to our notice facts of the case in detail and submitted that the amount received by the assessee is whether it falls under salary received in advance or compensation for termination. He brought to our notice Page No. 27 to 736 of the Paper Book to submit that several other employees who also claimed the similar claim u/s. 89 of the Act and in those cases the revenue has accepted that the compensation received by the respective individual are in the form of salary received in advance. He submitted that the case of the assessee is exactly similar to the above cases and revenue cannot take different views on the exactly similar issue. Further he brought to our notice the agreement between the individuals and the company. In this regard he relied on the case law filed before Ld.CIT(A) and further relied on two case law which are reproduced below: -

a) V.D. Talwar v. CIT [1963] 49 ITR 122 (SC).

b) Patil Vijaykumar v. CIT in writ petition nos. 4916 to 4936 of 1984 dated 10.08.1984.

He submitted that the above said case law are exactly similar to the facts of the assessee's case.

15. On the other hand, Ld. DR submitted that assessee is an ex-employee and received the compensation as ex-gratia as per the letter issued by the company. It clearly indicates that it is only a compensation not advance salary, in this regard she relied on the finding of the Ld.CIT(A) and brought to our notice Para No 5.1 of the order of the Ld.CIT(A).

16. Considered the rival submissions and material placed on record, we observed from the record that assessee is one of the employee who did not agree for the voluntary retirement scheme offered by the company and subsequently company has pledged a piece of land for the benefit of 275 employees who are not agreed for the voluntary retirement scheme compensation. Subsequently owing to the order of the Labour Commissioner and Municipal Corporation of the Greater Mumbai which imposed

certain conditions on the company to safeguard the interest of the 275 workers who had not opted for voluntary retirement scheme.

17. Subsequently individual employees and the company entered into supplementary agreement and the company agreed to compute the total compensation payable by the company till they attain 63 years of age and accordingly in the case of the assessee it was determined to be at ₹.59,61,483/-. The company after considering that these are one time lumpsum ex-gratia amount payable to the employee and settled the same after deducting the TDS as per the provision u/s. 192 of the Act. We observe from the record that company in the supplementary agreement has explained that the one time lumpsum ex-gratia amount is salary paid to the ex-employee in advance and accordingly, it has deducted tax at source in accordance with the provisions of the I.T. Act.

18. In this regard the company also issued Form 16 to the assessee for the relevant year 2016-17. On careful consideration of the facts on record we observe that even though the textile unit was closed on 2008 and assessee has refused to agree the voluntary retirement scheme offered by the company and under protest assessee and similar employees managed to get compensation through Labour Commissioner and as per the directions of the Labour Commissioner, as agreed by the company, the assessee was awarded the compensation for the remaining period of service till the age of 63 years. The basis of compensation calculated by the company and the company also treated the one-time compensation as a salary paid in advance and deducted the TDS on the same, clearly indicates that the compensation received by the assessee is only salary received in advance not as termination compensation even though this was paid in lumpsum as ex-gratia in one go.

19. As brought to our notice by the counsel for the assessee the case of V.D. Talwar v. CIT (supra) the Hon'ble Supreme Court held as under: -

> *"Learned counsel for the appellant has then relied on Duff (H. M. Inspector of Taxes) v. Barlow [1942] 10 ITR (Suppl.) 157. That was also a case where the parties agreed that the arrangement arrived at between them should subsist up to 1945 though no exact percentage of the remuneration payable was fixed. The arrangement however was brought to an end prematurely in November 1937 and in consideration of his premature termination some remuneration was paid for services up to November, 1937 and a sum of pound 4,000 was paid as compensation for the loss of the employee's right to future remuneration under the earlier agreement of 1935. In these circumstances it was held that the sum of pound 94,000*

was received by the respondent of that case not under the contract of employment nor as remuneration for services rendered or to be rendered but as compensation for giving up a right to remuneration. We are unable to see how that decision is of any help to the appellant in the present case. It seems clear to us that in the present case the appellant has surrendered no rights under the contract; what has been paid to him has been paid under the terms of contract and as salary which he would have earned if twelve months' notice had been given to him. As no notice was given he was treated as though he was in service and entitled to salary for twelve months and that was what was paid to him. It is difficult to see how such payment can be treated as compensation for loss of office.

The present case is similar to the two cases of Henry v. Arthur Foster and Henry v. Joseph Foster [1932] 16 Tax Cas. 605 and Henry's Case (supra) and different from the case of Hunter v. Dewhurst (supra). In the first two cases the respondents were directors of a limited company. They had no written contracts of services with the company but Article 109 of the company's articles provided that in the event of any director who held office for not less than five years, dying or resigning or ceasing to hold office for any cause other than misconduct, bankruptcy, lunacy or incompetence, the company should pay to him or his representatives by way of compensation for loss of office a sum equal to the total remuneration received by him in the preceding five years. The respondents resigned office as director in these two cases and received from the company as "compensation" a payment calculated in accordance with Article 109. It was held by the Court of Appeal that the payment constituted a profit of the office of Director and was properly assessable to income-tax. Lord Hanworth, M. R. said at page 629 :

> *"Now it is argued that those sums which became payable under the terms recorded in article 109 were compensation for the loss of office. Is that the substance of the matter? When a man has died he is not compensated for the loss of his life if he resigns voluntarily', why should he be paid compensation for the loss of his office? It would seem as if those words were put in in view of the possibility thereunder of escaping the charge to tax ; but, as I have said, we, have got to look at the substance of the matter, and the substance of this payment is this : It is contemplated as a part of the remuneration of the Director payable to him, and estimated according to his service during a certain time, and in addition to the amount paid to him under clause 104, there shall*

be estimated a sum which is to fall to be paid to him under clause 109."

Lawrence L. J. said at page 632 :

"'In my judgment, the determining factor in the present case is that the payment to the Respondent whatever the parties may have chosen to call it was a payment which the company had contracted to make to him as part of his remuneration for his services as a director. It is true that payment of this part of his remuneration was deferred until his death or retirement or cesser of office, and that in the articles it is called "compensation for loss of office." It is, however, a sum agreed to be paid in consideration of the Respondent accepting and serving in the office of Director, and consequently is a sum paid byway of remuneration for his services as Director."

It seems to us that the same principle should apply in the present case. What has been paid to the appellant is his salary in lieu of notice. If that is the true position then the amount paid is taxable under s.7 of the Indian Income- tax Act, 1922. It is not compensation for loss of employment within the meaning of Explanation 2 thereto."

20. Respectfully following the above said decision and the ratio laid down by the Hon'ble Supreme Court in the above case, we are inclined to treat the compensation received by the assessee as only salary received in advance. Therefore, we direct the Assessing Officer to allow the claim of the assessee u/s. 89 r.w. Rule 21A of I.T. Rules. Accordingly, the appeal filed by the assessee is allowed.

21. In the result, appeal filed by the assessee is allowed."

6.2 As the Hon'ble co-ordinate Bench of the Tribunal has dealt with the identical issue as involved in the instant case and taken a conscious decision based on the similar facts and circumstances and therefore, we, respectfully following the same, are inclined to direct the AO to allow the full claim to the assessee as claimed and recompute the income accordingly. Consequently, the AO is directed accordingly.

7. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 30.04.2024.

Sd/-	**Sd/-**
(RATNESH NANDAN SAHAY)	**(NARENDER KUMAR CHOUDHRY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT,
Mumbai.