

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, AM**

**AND**

**SHRI SUNIL KUMAR SINGH, JM**

**ITA Nos. 3940/MUM/2023**

**(Assessment Years: 2017-18)**

Mehul Anantrai Shah 103, Raj Niketan Bapubhai Vashi road Ville Parle (w) Mumbai 400056	Vs.	The Assistant Commissioner of Income tax 17 (1) Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN No. ABEPS6551M</b>		

**Assessee by** : Shri Tarang Mehta and  
Shri Vijay Mehta CA  
**Revenue by** : Shri Rajesh Meshram, Sr DR

**Date of hearing:** 22.05.2024

**Date of pronouncement :** 27.05.2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

1. ITA 3940/M/2023 is filed by Mr. Mehul Anantrai Shah (assessee/appellant) for assessment year 2017 – 18 against the appellate order passed by the National Faceless Appeal Centre (the learned CIT – A) wherein the appeal filed by the assessee against the rectification order passed under section 154 of The Income Tax Act by the Assistant Commissioner of Income Tax (the learned AO) was dismissed.
2. Therefore, the assessee is aggrieved with the appellate order and thus has preferred appeal raising following grounds:-

- i. The learned CIT – A his order in law and in facts in not holding that the AO has erred in passing assessment order under section 154 read with section 143 (1) of that which is bad in law, illegal and Null and void.
  - ii. The learned CIT – A has already law and in facts in not holding that the AO erred in passing the assessment order in gross violation of principles of natural justice.
  - iii. The learned CIT – A has already law and in facts in confirming the amount withdrawn from provident fund of Rs.3,291,601/- as income of the appellant.
3. Brief facts of the case shows that the assessee is an individual who filed his return of income on 28/7/2017 declaring total income of Rs.8,745,210/- wherein salary income was shown from Kotak Mahindra insurance Co Ltd was shown. In the return of income there is tax deduction at source in details at TDS 1 of details of tax deducted at source from salary assessee has shown tax deduction at source of Rs.2,479,777 from salary received from above company. Assessee also disclosed that employees Provident fund Organisation SAO Thane in that column where the income chargeable under the head salary was shown as rupees nil and total tax deducted thereon also shown at rupees Nil. As per form number 26Asit is found that assessee has withdrawn Rs.3,291,601/- from the above employee's prudent fund organisation which is disclosed in details of tax deducted. However, the total tax deducted on the above sum was Rs. nil and naturally no such tax was deposited. This disclosure was made in form number 26AS under section 192A the act wherein the transaction date is shown to be 22/11/2016. It is also admitted that this sum was not disclosed by the assessee in schedule EI of income tax return as details of exempt income (in not to be included in total income).

4. Thereafter Centralised processing Centre [CPC] issued a communication on 3/5/2018 to the assessee that income shown as per form no 26AS has not been included in the computation of the total income in the return of income and therefore there is an adjustment required under section 143 (1) (a) (vi) of the act. It specified that there is a difference in salary income shown as per the return of income of Rs. 8,382,814 whereas as per the form number 26AS such sum is shown to be 95,82,814 and therefore there is a difference of Rs 12 lakhs. Another point was with respect to income from other sources whereas the income as per income tax return was disclosed at Rs. 2,40,896 whereas form number 26AS show that it is Rs.3,471,746 and therefore there is a difference of Rs.3,256,850/-. After that assessee also received a communication from centralised processing Centre on 17/12/2018 which is on medication of proposed adjustment under section 143 (1) (a) of the Income Tax Act wherein it was stated that there is inconsistency between the salary income disclosed in the return of income of Rs.8,382,840/-as per form number 26AS is Rs.9,582,840 and therefore there is a difference of Rs. 12 lakhs.based on this and intimation under section 143 (1) of the act was passed on 26/3/2019 wherein the adjustment was with respect to the income disclosed in salary of Rs.7,564,496 was taken at Rs.8,764,496 and income from other sources of Rs 2,14,896 was taken at Rs.3,471,746. Thus, there is an addition of Rs.12 lakhs under the head salary income and further addition of Rs.3,226,850/- under the head income from other sources. The reason being that there is an inconsistency between the income shown in the return of income and income disclosed in form number 26AS.
5. Subsequently assessee revised its return of income on 29/4/2019 and gross total income of Rs.8,917,220 and disclosed exempt income of Rs.4,245,904/- which included the sum ofRs.3,291,601 being income

received from the employee's Provident fund. This was rectified return which was processed by the centralised processing Centre on 1/6/2019 wherein the income from salary shown by the assessee of Rs.7,564,496 was taken as per revised computation under section 154 of the act at Rs. 108,56,097. Computation of annexure – income from salary is identical as provided by the assessee in the return of income and as computed under section 143 (1) of the act. Thus, it is apparent that there is a difference in the computation of salary between assessee and the central processing Centre. The assessee has disclosed the income from salary of Rs.7,564,496/- and central processing Centre has computed the salary income at Rs. 1,08,56,097/- thus there is a difference of Rs.3,291,601/- which is the amount received by the assessee from employees' Provident fund withdrawn.

6. Assessee preferred an application under 154 of the act stating that central processing Centre while calculating computation under section 154 of the act has taken the withdrawal made by the assessee from his provident fund account of Rs.3,291,601/- as income of the assessee chargeable under the head of salary. Assessee stated that this is the amount which is been withdrawn by the assessee from his provident fund balance which was accumulated during his employment with his previous employer wherein it is employment with the previous employer was for more than five years as he joined service on 24/9/2009 and his services were terminated on 13/2/2015. To support his case assessee submitted proof related to the provident fund withdrawn. It was also submitted that even in form number 26 AS also the amount is shown as paid or credited to the assessee, but no tax is deducted at source. This amount is not chargeable to tax as same is exempt under section 10 (12) of the income tax act. Such communication was once again submitted on

25<sup>th</sup> of March 2021 wherein the copy of the letter submitted on 16/3/2020 was also enclosed.

7. On the above rectification application, The Assistant Commissioner of Income Tax Circle 17 (1) Mumbai passed order under section 154 of the act on 20/7/2021 rejecting the application holding that contention of the assessee is verified from records and found that, assessee has neither shown the income nor claimed the same as exempt income of Rs.32,91,601/- in the return of income. The income of Rs. 32,91,601/- is showing in Form 26AS and same is taken by CPC while passing the above said rectification order. There is no mistake which is apparent from record that can be rectified u/s 154 of the I. T. Act, 1961. Accordingly, rectification application filed by assessee is disposed of.
8. Assessee preferred an appeal before the NATIONAL FACELESS APPEAL CENTRE (NFAC) [ld. CIT (A)] on 15/09/2023 dismissing the appeal of the assessee holding as under:-

“4.1 Grounds of Appeal No. 1 & 2 are against the addition of Rs. 32,91,601/- w.r.t. amount withdrawal from PF and assessing the Total income of the appellant at Rs. 1,19,52,670/- as against the Total Income of Rs. 86,61,076/- declared in the Return of Income by the appellant.

4.1.1 I have considered the submissions made by the appellant based on facts and circumstances of the case along with the order of the AO and perused the material available on record. The Ld. AO passed order u/s 154 of the Act on 20.07.2021 where the Ld. AO has rejected the application on the ground that the assessee-appellant has neither shown the income nor claim the same as exempt income at the time of filing of original return of income. Based on the same, the Ld.AO has rejected the rectification application of the appellant. I agree

with the view of the AO, since the said income/exempt income was not shown by the assesseeappellant in his original return, so the same cannot be rectified based on new claim. Therefore, these grounds of appeals of the appellant are dismissed.”

9. Therefore, assessee is aggrieved with the appellate order and has preferred appeal before us.
10. The learned authorised representative Mr Tarang Mehta and Shri Vijay Mehta explained the facts of the case referred to the paper book containing 87 pages wherein the brief history of the case is demonstrated. The learned authorised representative vehemently referred to the originally common official received from the centralised processing Centre on 3/5/2018, and 17/12/2018. It further referred to the intimation passed under section 143 (1) of the act and the rectification order passed under section 154 of the income tax act. It was vehemently stated that the application for rectification dated 16/3/2020 and 26/3/2021 clearly stated that there is an apparent mistake from the record. As per the stated that assessee has disclosed the above sum in the return of income filed by assessee on 29/04/2019 which is rectified return taken on record by the central processing Centre wherein in the exempt income identical amount is shown that it has been ignored. Therefore, it stated that the order passed by the learned assessing officer under section 154 of the act is devoid of any merit without considering the explanation of the assessee that the income shown is exempt under section 10 (12) of the act and further there is no new claim made by the assessee. Accordingly, it was submitted that the sum of Rs.3,291,601/- is amount withdrawn by the assessee from his provident fund account after serving with its previous employer for five years and therefore such sum is not chargeable to tax under section 10 (12) of the act. It was

stated that all these details are provided before the lower authorities, but they have been ignored.

11. The learned departmental representative imminently supported the order of the lower authority and submitted that the assessee has failed to disclose the above sum as exempt income in the return of income and therefore the lower authorities have held that there is no error in the intimation passed in the section 143 (1) of the act.
12. We have carefully considered the rival contention and perused the orders of the lower authorities. The facts are very simple which shows that the assessee is an employee who has derived income from the salary. Earlier year was also employed with other entity. He found his previous employer from 24 September 2009 to 13 February 2015. Therefore, apparent that service of the assessee is more than five years. The assessee has offered and fund account from his previous employer namely Larsen and Toubro officers and supervisory staff provident fund. On 22 November 2016, assessee has written a sum of Rs.3,291,601/- which is reflected in form number 26AS of the assessee wherein it shown that the above amount is paid to the assessee however total tax deducted thereon and deposited thereon is Rs Nil . In the rectified return of income filed by the assessee in schedule EI assessee has specifically disclosed at serial number 5 of details of exempt income wherein Rs.3,291,601/- is stated to be exempt income. The total of the exempt income earned by the assessee is Rs.4,245,904/-. In view of this is apparent that assessee has disclosed the above amount is exempt income. Therefore, the order passed by the lower authorities are not sustainable in holding that the above sum withdrawn by the assessee from employees' Provident fund account after serving for more than five years with his previous employer. it is not denied that if the above conditions are satisfied, the income is exempt under section 10 (12) of

the act. Therefore, we do not find any merit in the orders of the lower authorities which were passed without looking into the facts of the case stated in 2 rectification applications filed before the containing all the evidence. In view of this, we direct the learned assessing officer to delete the addition made of withdrawal made by the assessee from his provident fund account which is exempt under section 10 (12) of the act.

13. In the result, ground number 3 of the appeal which is against the addition made of Rs.3,291,601/- is allowed.
  14. In view of our decision in ground number 3, other grounds of appeal become merely academic.
  15. In the result appeal filed by the assessee is allowed.
- Order pronounced in the open court on 27.05. 2024.

Sd/-

(SUNIL KUMAR SINGH)

(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)

(ACCOUNTANT MEMBER)

<sup>16.</sup>

Mumbai, Dated: 27.05. 2024

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar

Income Tax Appellate Tribunal, Mumbai