

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member,

Sh. Anubhav Sharma, Judicial Member

ITA No. 3140/Del/2023 : Asstt. Year: 2013-14

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| ACIT, New Delhi | Vs | Atul Punj, 10, Prithviraj Road, New Delhi-110011 |
| (APPELLANT) | | (RESPONDENT) |
| PAN No. AAFPP1942D | | |

**Assessee by : Sh. Rajat Jain, Adv. &
Sh. Akshat Jain, Adv.**

**Revenue by : Sh. Vizay B. Vasanta, CIT-DR &
Sh. Anshul, Sr. DR**

Date of Hearing: 05.07.2024

Date of Pronouncement: 10.07.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-43, New Delhi dated 09.08.2023.

2. Following grounds have been raised by the Revenue:

"1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in holding that the payment of Rs.39,90,718/- made to M/s Modern Creation International Limited claimed as business expenses by M/s Punj Lloyd Limited are perquisites of the assessee without appreciating the facts that M/s Punj Lloyd Limited was unable to substantiate that these payments were business expenses for the company and the assessee was unable to prove that the payment is not a perquisite for the assessee.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in holding that the payment of Rs. 10,75,932/- made to M/s Eurasia Services Ltd claimed as business expenses by M/s Punj Lloyd Limited are

perquisites of the assessee without appreciating the facts that M/s Punj Lloyd Limited was unable to substantiate that these payments were business expenses for the company and the assessee was unable to prove that the payment is not a perquisite for the assessee.

3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in holding that the payment of Rs. 1,01,23,547/-made to M/s Jaiman Engineering Pvt. Ltd claimed as business expenses by M/s Punj Lloyd Limited are perquisites of the assessee without appreciating the facts that M/s Punj Lloyd Limited was unable to substantiate that these payments were business expenses for the company and the assessee was unable to prove that the payment is not a perquisite for the assessee and without considering the impounded material i.e. excel sheet "Jaiman Employees-copy (1) 13028.xlsx" during survey at the premises of M/s Punj Lloyd Limited."

Payment made to M/s Modern Creation International Limited (MCIL) and M/s Eurasia Services Ltd (ESL):

3. The Assessing Officer made the addition based on the statement recorded of one Sh. Rahul Maheshwari u/s 131(1A) of the Income Tax Act, 1961 who stated that "*I cannot recall at this point. I will get back to this in the next seven days.*"

4. Before the Assessing Officer, the assessee Sh. Atul Punj submitted that the payments have been made to M/s MCIL and M/s ESL towards their services related to Myanmar project of the group company M/s Punj Lloyd Ltd. The copy of the invoice raised by the said entity along with relevant extract of bank statement of the company showing payments made to the stated entities was submitted to substantiate the veracity of the transaction. Not satisfied, the Assessing Officer made addition treating this amount paid by M/s Punj Lloyd Ltd. for business purpose as perquisite in the hands of the assessee under the

head "salary" on the grounds that this amount was diverted towards the assessee's personal use.

5. The Id. CIT(A) deleted the addition holding that the amount paid by the M/s Punj Lloyd Ltd. has not been received by the assessee which could be taxed as perquisite in his hand and no *iota* of evidence was brought on record which could substantiate that the assessee is a beneficiary of the payments made by M/s Punj Lloyd Ltd. to M/s MCIL and M/s ESL.

6. The Id. CIT(A) has also held that the assessee has further contended that no addition is justified without providing complete copies of relied upon information received from DCIT, CC-25, New Delhi along with documentary evidences forming part of survey report and copies of statement of Shri Rahul Maheshwari, CFO of M/s Punj Lloyd Limited for rebuttal and cross - examination of said deponent even though the appellant has made specific request for the same during the course of assessment proceedings that too without bringing any evidence on record to substantiate the content of said alleged information/survey report and statements of Shri Rahul Maheshwari. The assessee has also contended that statement of Shri Rahul Maheshwari does not have any evidentiary value to draw any adverse inference against the assessee as he had duly retracted from his statement by filing affidavit before the Director of Income Tax (Investigation) - II, New Delhi on 06.03.2019 i.e. within reasonable time i.e. 14 days. The assessee has also drawn attention to the fact that case of M/s Punj Lloyd Limited was also assessed u/s 147 of the Act for the assessment year 2013-14 by Deputy Commissioner of Income

Tax, Central Circle-25, New Delhi vide order dated 23.03.2022 wherein payment made to M/s Modern Creation International Limited and M/s Eurasia Services Limited have been accepted genuine business expenditure as no addition was made on account of said alleged payments, therefore, addition made in the hands of the appellant as perquisites by treating said alleged payments were made for the personal benefit of the appellant, is not sustainable and is bad in law and liable to be deleted.

7. Aggrieved, the Revenue filed appeal before the Tribunal.

8. Before us, the Id. DR relied on the order of the AO and the Id. AR supported the order of the Id. CIT(A) and the submissions made before the revenue authorities.

9. Heard the arguments of both the parties and perused the material available on record.

10. The AO made addition treating the amounts paid by the M/s Punj Llyod Ltd. a company to M/s MCIL and M/s ESL in the hands of the assessee Sh. Atul Punj treating the same as perquisite in addition to the salary.

- Sh. Atul Punj is not even the employee of M/s Punj Llyod Ltd.
- The amounts paid by M/s Punj Llyod Ltd. to M/s MCIL and M/s ESL have been duly explained. Even if the AO treats the amounts paid to be of non-business purpose, the disallowance needs to be made in the hands of M/s Punj Llyod Ltd. but it cannot fall on to the assessee.

- It is also a fact on record that the similar payment made by M/s MCIL and M/s ESL have been accepted in the assessment made u/s 147 for A.Y. 2013-14.
- The addition made by the statement of Sh. Rahul Maheshwari, CFO of M/s Punj Llyod Ltd., during a survey operation, the examination of which has not been accorded to the assessee.
- Even this statement given by Sh. Rahul Maheshwari was detracted by filing affidavit before the DIT(Inv.) within 14 days.

11. Hence, keeping in view, the entire facts and circumstances, we hold that no addition is called for on account of "perquisite" under the head "salary" to the income of the assessee.

Payment made M/s Jaiman Engineering Pvt. Ltd.:

12. The Assessing Officer made the addition based on the statement recorded of one Sh. P. K. Mehta, Director of M/s Jaiman Engineering Pvt. Ltd u/s 131(1A) of the Income Tax Act, 1961 who stated that "*I did not use to attend Board meetings of the company.....I am not aware of the same since I was never invited to the Board meetings.*"

13. Based on the survey conducted in M/s Punj Lloyd Ltd., the addition has been made in the hands of the assessee as "perquisite" to the salary income taking into account the impounded material reflecting employment of cook, garners, helpers, office boys who are deputed at the residence of the assessee.

14. Aggrieved, the Revenue filed appeal before the Id. CIT(A).

15. Before the Id. CIT(A), the assessee has contended that the payments made to M/s Jaiman Engineering Private Limited was for business purpose of M/s Punj Lloyd Limited and said payments were not received by the appellant from M/s Punj Lloyd Limited and no emolument or benefit attached to an office or position in M/s Punj Lloyd Limited was received by the appellant which could be taxed as perquisite in his hand and no iota of evidence was brought on record which could substantiate that the assessee is beneficiary of payments made by Punj Lloyd Limited to M/s Jaiman Engineering Private Limited. The assessee has further contended that no addition is justified merely relying upon soft data, excel sheet Jaiman Employees containing name of employee, date of joining, designation and location retrieved from data impounded during survey of the premises of M/s Punj Lloyd Limited without appreciating the fact that the same is not an admissible evidence under the Indian Evidence Act, 1872 that too, to the assessee without bringing any evidence on record to substantiate the content of said alleged soft data, excel sheet by conducting any independent enquiry. The assessee has further contended that no addition is justified without providing copy of relied upon statement of P K. Mehta, former director of M/s Jaiman Engineering Private Limited recorded on 25.06.2019 during post survey proceedings in the case of M/s Punj Lloyd Limited for rebuttal and cross-examination of said deponent even though the appellant has made specific request for the same during the course of assessment proceedings.

16. The assessment records of the appellant were called for inspection by the Id. CIT(A) vide letter dated 01.08.2023 and it is seen on verification of records that the appellant in fact had requested for cross examination vide letter dated 19.02.2022. The Id. CIT(A) held that it is evident that the AO had not provided any opportunity for cross examination to the appellant in course of assessment proceedings.

17. The Id. CIT(A) held that in the case of M/s Punj Lloyd Limited assessed u/s 147 of the Act for the assessment year 2013-14, the AO passed the assessment order u/s 147 of the Act dated 23.03.2022 and has also made proportionate disallowance of Rs.57,61,190/- for the cost of total 76 employees provided by M/s Jaiman Engineering Pvt. Ltd. employed at the personal premises of Atul Punj. M/s Punj Lloyd Limited was under the insolvency process from 08.03.2019 and the powers of the Board of Directors were suspended and the operations of said company are/were managed by the Resolution Professional and the said company is regularly making payments to M/s Jaiman Engineering Private Limited on account of manpower services being provided for the same locations/sites even in A.Y. 2021-22.

18. The assessee further contended that M/s Punj Lloyd Limited has made payment to Jaiman Engineering Pvt. Ltd. for the same location/ site is also corroborated from the fact that the Assessing Officer has also made similar estimated disallowance on account of payments made to Jaiman Engineering Pvt. Ltd. for providing manpower services by treating the same as not used for the business purpose for the

AY 2021-22 as were made in the assessment order passed u/s 147 of the Act in the case of M/s Punj Lloyd Limited for the assessment year 2013-14. Therefore, there is no basis to sustain addition made by the AO in the case of appellant as perquisites by alleging that manpower services provided by M/s Jaiman Engineering Private Limited were used for personal purposes of Atul Punj and hence, liable to be deleted.

19. The Id. CIT(A) deleted the addition holding that it is evident from record that the appellant was not an employee in M/s Punj Lloyd Limited and not drawn any salary during the year and no emolument or benefit attached to an office or position in said company was received by the appellant. The Id. CIT(A) held that it is evident that M/s Punj Lloyd Limited was under the insolvency process from 08.03.2019 and the powers of the Board of Directors were suspended and the operations of said company are were managed by the Resolution Professional and the said company is regularly making payment to the alleged concern namely M/s Jaiman Engineering Private Limited for the same sites/locations even after the appointment of IRP. The Id. CIT(A) held that the payment to Jaiman Engineering Private Limited by IRP clearly establishes that said payments were genuine business expenditure and it cannot be said that the said manpower were utilized for the personal use of assessee.

20. Aggrieved, the Revenue filed appeal before the Tribunal.

21. Before us, the Id. DR relied on the order of the AO and the Id. AR supported the order of the Id. CIT(A) and the submissions made before the revenue authorities.

22. Heard the arguments of both the parties and perused the material available on record.

23. The AO made addition treating the amounts paid by the M/s Punj Llyod Ltd. a company to M/s Jaiman Engineering Pvt. Ltd. in the hands of the assessee Sh. Atul Punj treating the same as perquisite in addition to the salary. It is a fact on record that Sh. Atul Punj is not even the employee of M/s Punj Llyod Ltd. The amounts paid by M/s Punj Llyod Ltd. to M/s Jaiman Engineering Pvt. Ltd. have been duly explained. The addition made by the statement of Sh. P. K. Mehta, Director of M/s Jaiman Engineering Pvt. Ltd. during a survey operation, the examination of which has not been accorded to the assessee. Even after appointment of the resolution professional under insolvency proceedings have made similar payments to the M/s Jaiman Engineering Pvt. Ltd. which led the Id. CIT(A) to hold that this vary fact establishes that the payments were for business expenditure. Hence, we hold that there is no reason for the AO to treat this amount as "perquisite" under the head "salary" to the income of the assessee. The order of the Id. CIT(A) on this issue is affirmed.

24. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 10/07/2024.

Sd/-

**(Anubhav Sharma)
Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)
Accountant Member**

Dated: 10/07/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR