

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE "B" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

I.T.A.No.1111/PUN./2024 [E-APPEAL]  
Assessment Year 2019-2020

Shri Parvez Mukhtar Khan, Flat No.B-3, B-Wing, Near Azad College, Rauza Baug, AURANGABAD. PIN – 431 003. Maharashtra. PAN ARXP6051D	vs.	The Income Tax Officer, Ward-1(1), 2 <sup>nd</sup> Floor, LIC Bldg., Cannough Place, AURANGABAD – 431 001. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Nikhil Pathak & Miss. Arrchena Shetty
For Revenue :	Shri Arvind Desai, Addl. CIT-DR

Date of Hearing :	17.09.2024
Date of Pronouncement :	27.09.2024

**ORDER**

**PER SATBEER SINGH GODARA, J.M. :**

This assessee's appeal, for assessment years 2019-2020 arise against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No.ITBA/NFAC/S/250/2023-24/1062985607(1), dated 20.03.2024, in proceedings u/s. 143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The assessee raises the following substantive grounds in the instant appeal :

1. *The Learned CIT(A) has erred by not giving sufficient & reasonable opportunity for representing && making further legal submissions, the learned CIT(A) had given one single notice & after receiving written submission, has immediately passed the Order without providing any further opportunity of making additional submissions, which were essential & necessary. The Appellant was debarred from making personal representation through Video Conferencing as specifically requested for & the principles of fair representation have not been allowed & the learned CIT(A) passed the Order hurriedly for no reason.*
  
2. *The Learned CIT(A) has confirmed by partially holding that amount of Rs.50,72,750/- by treating it as Profits in lieu of Salary, he has erred in understanding the meaning of Compensation in reference to Sec.17(3)(i) as explained by various High Courts & has failed to apply the established legal position of appellant's entitlement to receive & employer's Obligation to pay, are fundamental to hold the said amounts as compensation. He has erred in treating the said Capital Receipt amounts as Profits in lieu of Salary u/s 17(3), ignoring Explanation 3 of Sec. 17(2) & Rule 3 sub-clause (10) Explanation (i).*

3. *The Learned CIT(A) has erred by not taking a balanced view by differing on the nature of the payments received from the employer, he erred in not accepting the amounts of Rs. 59,72,750/- as Capital Receipts in the same spirit as he has accepted the Conditional Incentives as Capital Receipts.*
4. *The Learned CIT(A) has erred in not considering and understanding the Financial Scheme Document and failed to arrive at the correct interpretation and the underlying intentions of the Co. towards the appellant and the need for evolving the said scheme of pre-mature retirement of all employees permanently.*
5. *The Learned CIT(A) has erred in not accepting the Appellant's stand of the said amount received, being Capital Receipts in nature, irrespective of the same being obligatory or not on part of the Co. & has erred in not considering that the payments were made de hors any contract of employment & was paid voluntarily & towards loss of source of income for premature termination of Appellant's employment & the Appellant was legally entitled to change the nature of his claim from Profits in lieu of Salary to the same being Capital Receipts in the course of assessment proceedings.*

6. *The Learned CIT(A) has erred in confining the AO's assessment which has been completed on an unbalanced assessment, impartial of any assumptions & presumption, he is required to co-relate the factual parameters & the legal framework in tandem & decide by his wisdom & uphold rule of law, as he is being a quasi-judicial officer.*

7. *The Appellant Craves Leave to add, Alter, or amend any of the Grounds of the Appeal, before or during hearing of the Appeal.”*

3. Suffice to say, the sole substantive issue which invites our apt adjudication herein is that of correctness of both the learned lower authorities action assessing this taxpayer for Rs.84,93,920/- there by withdrawing his deduction claim u/sec.89 of the Act. There is hardly any dispute between the parties that this assessee was a salaried employee with M/s. Pfizer Healthcare India (P) Ltd., in which the latter decided to close manufacturing with the intention to get out of the long term losses. The said employer appears to have floated a golden hands-shake scheme namely “Pfizer Healthcare India Ltd., Financial Scheme for employees at Aurangabad 2019” which followed payment of compensation of Rs.77,41,038/- to the taxpayer. And it is this sum received in the relevant previous year which stands assessed in assessee's hands as his taxable income under section 89 of the Act.

4. Both the learned representatives reiterated their respective stands against and in support of the impugned disallowance. It further transpires that this tribunal's recent coordinate bench's order in ITA.No.117/PUN./2024 Ashok Raghunathrao Kulkarni vs. ITO, Aurangabad has already decided the very issue in assessee's favour and against the department as follows :

*"3. Facts of the case in brief, are that the assessee is an individual and filed his return of income on 02.08.2019 declaring total income of Rs.61,10,370/-. The case was selected for compulsory scrutiny under the E-assessment Scheme, 2019 on the following issues:*

*S.No.Issues*

*i. Refund Claim*

*ii. Relief for Arrear Salary or Advance Salary*

4. *Accordingly, statutory notices u/s 143(2) and 142(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') were issued and served on the assessee, in response to which the assessee submitted details as called for by the Assessing Officer from time to time.*

5. *During the course of assessment proceedings the Assessing Officer noted from the ITR that the assessee has shown salary income of Rs.63,56,239/- in the ITR. Out of this, an amount of Rs.57,12,674/- was shown as salary received in*

*advance in accordance with the provisions of sub-rule (2) of rule 21A and had claimed tax relief u/s 89 of the Act for the amount of Rs.18,74,899/-. It was submitted that the assessee is a salaried employee who had worked with M/s. Pfizer Healthcare India Pvt. Ltd. during the assessment year 2019-20. Due to the United States Food and Drug Administration (USFDA) Norms, the said plant had been closed down. On account of loss of income / service due to that the said company had given capital receipts / payments to the employees to those who were affected, depending on the balance service left on their service records. This is the amount the assessee had received from his employer for loss of service. Its calculations were done by the employer on the basis of service balance as per his service records.*

6. *The assessee also enclosed Form 10E. From the Financial Scheme for employees at Aurangabad, 2019 issued from the employer of the assessee i.e. Pfizer Healthcare India Pvt. Ltd., the Assessing Officer noted the following declarations:*

- Pfizer Healthcare India Private Limited had decided to cease manufacturing in its plant located at Plot No. L-8 (part) & L-9, Gut NOs. 36, 37, 38, MIDC, Waluj, Aurangabad-431136, India with the intention to exit the Plant due to significant long term loss of product demand.*

- *The Company is desirous of providing a beneficial settlement to all permanent employees of the Plant. Towards this objective, the Company has taken a decision to offer a financial scheme to its permanent employees at the Plant, on the terms and conditions set out below.*
- *The Scheme (as hereinafter defined) is purely voluntary and it is for each such employee to decide whether or not to opt for the same.*
- *In the event the employees opt to retire voluntarily from their employment with the Company in accordance with the Scheme, their last day of employment with the company will be February 8, 2019, (unless mutually agreed otherwise in writing) and they will be paid an attractive financial package on the terms and conditions set out below. Those employees who do not opt for the Scheme (as here in after defined), will be paid only statutory or contractual dues payable on cessation of employment, provided they are eligible for the same.*
- *Employees desirous of opting for this Scheme and whose Applications have been accepted by the Management will be informed in writing or by*

*electronic mail about the acceptance of their Applications and the concerned Employee will be deemed to have voluntarily retired on February 8, 2019, unless mutually agreed otherwise.*

- *If the Application has been accepted by the Management, the Employee will be paid compensation equivalent to the lesser of the following, subject to a minimum of 6(six) months' Wages drawn by the Employee.....*  
.....
- *In addition to the Compensation as provided under Clause 5 above, each Employee whose signed Application has been accepted by the Company will also be entitled to incentives based on certain conditions .....*”

7. The assessee also gave the breakup of the amount of Rs.57,12,674, details of which are as under :

<p><i>Ex-gratia (Severance pay)</i>  <i>[Subject to a minimum of 6 (six months Wages drawn by the Employee:</i>  <i>(i) 75 days wages for every year of service with the Company,</i>  <i>Or</i>  <i>Wages for the remaining months of service with the Company till the attainment of retirement age of 58 years.]</i></p>	<p><i>Rs.41,76,438/-</i></p>
<p><i>(ii) Other Payments (Early Bird = Rs.7 Lakh and Group participation Incentives =</i></p>	<p><i>Rs.12,00,000/-</i></p>

<i>Rs.5 Lakh)</i>	
<i>(iii) Notice Period Payout (3 months x monthly gross considered for scheme calculation)</i>	<i>Rs.2,39,866.80/-</i>
<i>(iv) Medical Reimbursement</i>	<i>Rs.404.11/-</i>
<i>(v) Bonus for Current Year FY 2018-19 (till date of relieving)</i>	<i>Rs.14,400/-</i>
<i>(vi) EL Encashment</i>	<i>Rs.60,866/-</i>
<i>(vii) Part Salary for the month of Relieving i.e. Feb 2019</i>	<i>Rs.20,698.90/-</i>
<i>Total</i>	<i>Rs.57,12,673.79/-</i> <i>-</i>

8. From the above, the Assessing Officer noted that the assessee has received compensation and other dues totaling to Rs.57,12,674/- which includes Ex-gratia (Severance pay), incentives, EL encashment, Notice pay, etc. Rejecting the various explanations given by the assessee and observing that the Ex-gratia payment is presented to an individual by an organization and is viewed as voluntary because the employer making the payment is not obligated to compensate the individual and therefore, it has to be treated as additional compensation / severance pay received by an employee from employer and therefore, is taxable as Profits in lieu of salary u/s 17(3) of the Act. The Assessing Officer therefore, disallowed the tax relief claimed u/s 89 of the Act of Rs.18,74,899/-.

9. Before the CIT(A) / NFAC the assessee submitted that the assessee vide its submissions dated 16.08.2021 had withdrawn the claim u/s 89 of the Act made in the ITR and computation and alternatively and protectively requested the

*Assessing Officer to treat and consider all these amounts as 'capital receipts' as they were received as ex-gratia and severance pay in lieu of termination of premature retirement and permanent loss of source of income. The decision of the Mumbai Bench of the Tribunal in the case of Sri Ajay B Ghose vs. DCIT, CPC, Bangalore for assessment year 2017-18 vide appeal in ITA No.1720/Mum/2021, dated 15.11.2021 was also relied upon.*

10. *However, the CIT(A) / NFAC did not agree with the contention of the assessee and upheld the action of the Assessing Officer by observing as under:*

*“4.3.2 In this case, the AO observed that the Preamble of Financial scheme for employees at Aurangabad 2019 (scheme) issued from the employer Pfizer Healthcare India P ltd. that it is not a voluntary retirement in normal course but a scheme to retire voluntary from their employment in order to provide a beneficial settlement to its permanent employees of the plant. It is on the employee to decide whether or not to opt for the same. Moreover, the payment of exgratia (severance pay) under the scheme together with all other dues mentioned therein is in full and final settlement of all the statutory and contractual dues owned to the assessee in connection with his employment with the company and the cessation thereof. It is also*

*mentioned in the preamble of Financial scheme for employees at Auragabad 2019 (scheme) issued from the employer Pfizer Healthcare India P Ltd. that those employees who opt for voluntary retirement under the Scheme will not be entitled to any compensation or notice pay under the provisions of the Industrial Disputes Act, 1947 as their cessation from the employment constitutes resignation and does not constitute retrenchment or termination of employment by the company.*

*4.3.3 In the appellant's case, the company has issued Form 16 to the appellant showing the compensation including other due payables under salary as per provisions contained u/s. 17(1) and tax deducted at source accordingly, which shows that the nature of pay an allowance received by the appellant from his employer on relieving the job, is in difference nature as shown by the appellant in the !TR for A.Y. 2019-20 and in Form 10E. The payment received by the appellant in the nature of Ex gratia, notice pay, other payments (early bird), group participation incentives, medical reimbursement, bonus for current year, EL encashment and part salary for the month of relieving is taxable in the hands of the employee as profit in lieu of salary under section 17(3) of the I T Act and*

*is taxable on due basis or receipt basis, whichever is earlier.*

4.3.4 *The case laws referred by the appellant are not relevant in the case of the appellant. In the present case, as per the scheme, it is not a voluntary retirement in normal course but a scheme to retire voluntary from their employment in order to provide a beneficial settlement. It is on the employee to decide whether or not to opt for the same.*

4.3.5 *In view of the above reasons, I have no reason to interfere with the findings of the Assessing Officer and no reason to hold that the AO was wrong in rejecting the claim of the appellant made under sec. 89 of the I T Act. Therefore, the disallowance of tax relief made by the AO are confirmed. All grounds raised by the appellant are dismissed.”*

11. *Aggrieved with such order of CIT(A) / NFAC, the assessee is in appeal before the Tribunal.*

12. *The Ld. Counsel for the assessee referred to the Financial Scheme for the employees at Aurangabad of Pfizer Healthcare India Pvt. Ltd., copy of which is placed at pages 73 to 83 of the paper book and drew the attention of the Bench to the following clauses:*

*"I. PREAMBLE*

- (i) Pfizer Healthcare India Private Limited (the "Company") has decided to cease manufacturing in its plant located at Plot No L-8 (part), L-9 & Gut Nos 36, 37, 38, MIDC, Waluj, Aurangabad - 431136 ("Plant") with the intention to exit the Plant due to significant long term loss of product demand.*
- (ii) The above decision is bona fide and has been made after an extensive and careful evaluation. The employees of the Plant have been informed of this decision and reasons thereof.*
- (iii) The Company is desirous of providing a beneficial settlement to all permanent employees of the Plant. Towards this objective, the Company has taken a decision to offer a financial scheme to its permanent employees at the Plant, on the terms and conditions set out below. The Scheme (as hereinafter defined) is purely voluntary and it is for each such employee to decide whether or not to opt for the same.*
- (iv) In the event the employees opt to retire voluntarily from their employment with the Company in accordance with the Scheme, their last day of employment with the Company will be February 8,*

2019, (unless mutually agreed otherwise in writing) and they will be paid an attractive financial package on the terms and conditions set out below. Those employees who do not opt for the Scheme (as hereinafter defined), will be paid only statutory or contractual dues payable on cessation of employment, provided they are eligible for the same.”

13. Referring to other terms and conditions as per clause (11), the Ld. Counsel for the assessee drew the attention of the Bench to the sub-clause (viii) of the same, which reads as under:

“(viii) All Employees who opt for voluntary retirement under the Scheme will not be entitled to any compensation or notice pay under the provisions of the Industrial Dispute Act, 1947 as their cessation from the employment constitutes “resignation” and does not constitute “retrenchment” or “termination of employment” by the Company”.

14. Referring to the provisions of section 17(3) of the Act, the Ld. Counsel for the assessee submitted that the same are not applicable to the facts of the assessee, which reads as under:

“17(1)....

17(2)....

(3) "profits in lieu of salary" includes—

*(i) the amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment or the modification of the terms and conditions relating thereto;*

*(ii) any payment (other than any payment referred to in clause (10), clause (10A), clause (10B), clause (11), clause (12), clause (13) or clause (13A) of [section 10](#)), due to or received by an assessee from an employer or a former employer or from a provident or other fund, to the extent to which it does not consist of contributions by the assessee or interest on such contributions or any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.*

*Explanation.—For the purposes of this sub-clause, the expression "Keyman insurance policy" shall have the meaning assigned to it in clause (10D) of [section 10](#);*

*(iii) any amount due to or received, whether in lump sum or otherwise, by any assessee from any person—*

*(A) before his joining any employment with that person; or*

*(B) after cessation of his employment with that person.”*

15. So far as sub-clause (ii) is concerned, the Ld. Counsel for the assessee referring to the various decisions submitted that this clause is also not applicable. He submitted that the amount received by the assessee is not a compensation but on account of loss of pay. Referring to the decision of the Hon'ble High Court of Calcutta in the case of CIT vs. Ajit Kumar Bose (1987) 165 ITR 90 (Cal), he submitted that the Hon'ble High Court has held that where the conditions of service clearly stipulated that the assessee's services could be terminated at any time on giving three months notice and there was no obligation on the employer to pay anything to the assessee in connection with the termination, payment made ex-gratia, therefore, totally voluntary and not compensation which implies some sort of obligation to pay and cannot be taxed as profits in lieu of salary within meaning of section 17(3) of the Act. Referring to the copy of letter of probation dated 20.07.2020 he drew the attention of the Bench to column 14 of the same which reads as under:

“14. Notice Period :

During the period of probation, your employment can be terminated without any notice or assigning any reason thereof on either side. On confirmation your employment can be

*terminated by one month's notice in writing or pay in lieu thereof on either side."*

16. *He accordingly submitted that the decision of the Hon'ble High Court of Calcutta cited (supra) is squarely applicable to the assessee.*

17. *The Ld. Counsel for the assessee referring to the decision of the Pune Bench of the Tribunal in the case of Mahadev Vasant Dhangekar vs. ACIT (2023) 149 taxmann.com 170 (Pune-Trib.) submitted that the Tribunal in the said decision has held that where the assessee had received Rs.47.21 lacs from the erstwhile company as ex-gratia and letter has been issued by the employer which clearly stated that payment of amount has been made voluntarily to the assessee and was not compensation without establishing letter as non-genuine or without examining sanctity of payment made simply invoking provisions of section 17(3)(iii) for making addition was not justified.*

18. *Referring to the decision of the Delhi Bench of the Tribunal in the case of ITO vs. Avirook Sen (2024) 161 taxmann.com 462 (Delhi - Trib.), he submitted that the Tribunal in the said decision has held that where the assessee has received certain amounts as lump sum amount after his termination from the*

*service as a settlement out of court with his employer and said payment was voluntary in nature without there being any obligation on part of employer to pay further amount to assessee in terms of any service rule, such payment would not amount to compensation in terms of section 17(3)(i).*

19. *Referring to the various other decisions as per case law compilation, he submitted that the amount received by the assessee cannot be termed as compensation in terms of section 17(3)(i).*

20. *The Ld. Counsel for the assessee submitted that in case of the following employees where they have also received similar amounts from Pfizer Healthcare India Pvt. Ltd., the said amounts have not been added by the respective AOs in the reopening assessments treating the same as capital in nature.*

<i>Sr. No.</i>	<i>Particulars</i>	<i>PAN</i>	<i>Date of Order</i>
1	<i>Sharad D. Magar</i>	<i>ASHPM1986C</i>	<i>28.3.2024</i>
2	<i>Dnyaneshwar Waghmare</i>	<i>ABCPW4100G</i>	<i>26.3.2024</i>
3	<i>Ajay K. Agrawal</i>	<i>AJJPA2079F</i>	<i>21.3.2024</i>
4	<i>Kalidas T Deshmukh</i>	<i>AKTPD8174D</i>	<i>10.3.2024</i>
5	<i>Bhimraj S Kahandal</i>	<i>ABRPK4860E</i>	<i>9.3.2024</i>
6	<i>Nandkishor Khairnar</i>	<i>BFEPK6767A</i>	<i>9.3.2024</i>
7	<i>Narendrakumar P Desale</i>	<i>BALPD6728C</i>	<i>4.3.2024</i>
8	<i>Ramesh S. Sonavne</i>	<i>CEAPS7400G</i>	<i>21.2.2024</i>
9	<i>Sanjay N. Karale</i>	<i>AAFPA0335H</i>	<i>16.2.2024</i>
10	<i>Ravindra W.</i>	<i>ABDPA1341G</i>	<i>13.2.2024</i>

	<i>Aherwal</i>		
11	<i>AG Deshmane</i>	<i>AVLPD8364J</i>	<i>10.11.2023</i>

21. He accordingly submitted that the CIT(A) / NFAC is not justified in sustaining the addition of Rs.57,12,673/-.

22. The Ld. DR on the other hand heavily relied on the order of CIT(A) / NFAC.

23. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed by both the sides. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case rejected the claim of relief u/s 89 of the Act of Rs.18,74,899/- on income of Rs.57,12,674/- treating the same as income u/s 17(3) of the Act. We find the CIT(A) / NFAC upheld the action of the Assessing Officer, reasons of which are already reproduced in the preceding paragraphs. The CIT(A) / NFAC also rejected the alternate claim of the assessee that such amount being a capital receipt cannot be brought to tax. It is the submission of the Ld. Counsel for the assessee that in case of various other employees who have received similar compensation, the same has been accepted as capital receipt by the respective AOs in re-assessment proceedings and no addition has been made. Further, various Co-ordinate Benches of the Tribunal in similarly placed employees have also treated such compensation received

*on termination of service as capital in nature and not falling u/s 17(3) of the Act.*

*24. We find the Assessing Officer in the case of Sharad D. Magar, who also resigned voluntarily from service of Pfizer Healthcare India Pvt. Ltd., Aurangabad has accepted the compensation received at Rs.30,49,176/- as capital in nature by observing as under:*

*“Brief facts of the case:*

*The assessee, Shri Sharad Daulatrao Magar, having PAN: ASHPM1986C, an salaried individual, had filed ITR-1 u/s. 139(1) for AY 2019-20 on 29.07.2019 declaring total income of Rs.32,03,150/-. Further, Rs.35,54,140/- was shown as Gross Salary. The assessee was employee of M/s Pfizer Healthcare India Pvt Ltd, Aurangabad during FY2018-19. The company launched VRS beneficial to the employees on planned closure of its unit. The assessee voluntarily resigned from service w.e.f 08.02.2019 and received compensation and out of that compensation he claimed Rs.30,49,176/- being salary claimed in Advance as exempt u/s 89 from taxation in his ITR u/s 139(1) of the Act.*

*.....*

*14. The submissions made by the assessee have been examined. As the assessee has submitted corroborative*

*and binding judicial pronouncements in support of his claim that the amount of Rs.30,49,176/- received by him from his employer at the time of cessation of his employment due to closure of the manufacturing unit was a capital receipt, not subject to tax. The assessee has also placed reliance on various case laws, in support of his above claim, and court has held as under "The amounts received were due to loss of employment & not recurring in nature & are not paid in lieu of any salary hence it does not come under the preview of sec. 17(3)(i) as amount of compensation. The said amounts have not been paid against any services of the assessee. Hence the same is not compensation as contemplated under the provisions of sec. 17(3)(i)." As the various courts have allowed the claim that the amount received at the time of cessation of his employment due to closure of the manufacturing unit as capital receipt during assessment proceedings in the cases referred by the assessee, the AO's has duly accepted the above claims of the respective assessee, which are very similar cases as that of the assessee's instant case. Hence, the reopened assessment proceedings in the case of the assessee, is hereby proposed to be completed by accepting the income returned by the assessee in response to 148."*

25. *In the remaining cases also, the respective AOs have treated such compensation as capital in nature. We, therefore, find merit in the arguments of the Ld. Counsel for the assessee that when the concerned AOs after reopening of the assessment have treated such compensation as capital in nature and the Revenue has not challenged the same and which has attained finality since no 263 proceedings have been initiated, therefore, the assessee's case being identical to the facts of the other employees of Pfizer Healthcare India Pvt. Ltd., the CIT(A) / NFAC is not justified in sustaining the addition made by the Assessing Officer.*

26. *We further find the Hon'ble Calcutta High Court in the case of CIT vs. Ajit Kumar Bose (supra) has observed as under:*

*"4. The amount in question was received by the assessee from his employer. It was received by him in connection with the termination of his service. But the question still remains whether it was compensation. Since it was received by the assessee in connection with the termination of his employment, the term "compensation" would be referable to that event. In other words, it is to be seen whether the amount was paid as compensation for the termination or in lieu of the termination of the employment.*

5. The letter issued by the employer dated July 3, 1969, stated that the amount was being paid *ex gratia*. There is nothing to indicate that the assessee was entitled to continue in the employment of the company up to any particular age. Under the conditions of service, his services were liable to be terminated on giving three months' notice without assigning any reason. Under the circumstances, it cannot be said that the assessee was entitled to remain in service for any period longer after the requisite notice has been given or that the employer was under any obligation to pay anything to the assessee in connection with the termination of his employment other than the salary for the period of notice. Under the circumstances, in its true nature and character, the payment was *ex gratia*, that is to say, totally voluntary; it was not compensation which implies some sort of an obligation to pay.

6. In this view, it cannot be said that the amount in question was profits in lieu of salary within the meaning of Clause (3) of [Section 17](#). It was not taxable as such. The finding of the Tribunal that the amount was a capital receipt or that it was payment of a casual and non-recurring nature was in the circumstances not necessary. We, hence, do not express any opinion on it.

7. The question of law referred to us in this case, namely :

*"Whether, on the facts and in the circumstances of the case, the amount of Rs. 24,933 received by the assessee could be treated as income under the charging section or under the section dealing with the computation of income of the assessee ?"*

*8. is answered in the negative, in favour of the assessee and against the Department."*

*27. We find the Delhi Bench of the Tribunal in the case of ITO vs. Avirook Sen (supra) at para 12 of the order has observed as under :*

*"12. As the payment of ex-gratia compensation was voluntary in nature without there being any obligation on the part of employer to pay further amount to assessee in terms of any service rule. it would not amount to compensation in terms of [section 17\(3\)\(i\)](#) of the Act. The impugned addition was rightly deleted by the Ld. CIT(A). The aforesaid point is accordingly determined against the revenue department. The appeal is accordingly not sustainable as we don't find any error of law or fact in the impugned order passed by Ld. CIT(A). The department appeal is liable to be dismissed."*

*28. The various other decisions relied on by the Ld. Counsel for the assessee placed in the paper book support his case to*

*the proposition that the payment of ex-gratia compensation received by the assessee was voluntary in nature without there being any obligation on the part of the employer to pay further amounts to the assessee in terms of any service rule and therefore, would not amount to compensation in terms of section 17(3) of the Act. We, therefore, set aside the order of the CIT(A) / NFAC and direct the Assessing Officer to delete the addition. The grounds raised by the assessee are accordingly allowed.”*

5. The Revenue is equally fair in not pin-pointing any specific distinction on facts or law since the same pertains to the very employer i.e., M/s. Pfizer Healthcare India (P) Ltd., (supra), accepted accordingly.

6. This assessee's appeal is allowed in above terms.

Order pronounced in the open Court on 27.09.2024.

Sd/-  
[DR. DIPAK P. RIPOTE]  
ACCOUNTANT MEMBER

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Pune, Dated 27<sup>th</sup> September, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "B" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,  
Pune.