

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A”BENCH: BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1537/Bang/2024
Assessment Year : 2017-18

Shivabasappa Kariyappanavar, No.T-01, Evergreen Apartment, 2 nd Main, 4 th J Cross, B. Channasandra, Kasturi Nagar, Bangalore 560 043. PAN NO : AJLPK8598B	Vs.	ITO Ward-5(3)(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Sri Rajeev C. Nulvi, A.R.
Respondent by	:	Sri Ganesh R. Ghale, Standing Counsel for department

Date of Hearing	:	17.09.2024
Date of Pronouncement	:	13.12.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of Id. ADDL/JCIT(A)-1, Chandigarh dated 28.06.2024 vide DIN & Order No.ITBA/APL/S/250/2024-25/1066175812(1) for the AY 2017-18, passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”).

2. The assessee has raised the following grounds of appeal:

1. The intimation CPC u/s 143(1) of the Income Tax Act, 1961 dated 19-03-2019, rectification order u/s 154 of the Income Tax Act, 1961 passed by CPC dated 27-09-2019 and the appellate order u/s 250 of the Income Tax Act, 1961 dated 28/06/2024 passed the income tax authorities below, were against the facts of the case and bad in law.
2. On the fact and circumstances of the case and under the provisions of the law, the income tax authorities erred in taxing the severance fee received on termination of employment under the compulsory retirement service scheme which is the compensation for loss of the source of income, is in the nature of capital receipt.
3. On the fact and circumstances of the case and under the provisions of the law, the income tax authorities violated Article 14 of the Constitution of India by treating unequally against the other assesseees, wherein, the fact and question of the law were the same and similar.
4. On the fact and circumstances of the case and under the provisions of the law, the income tax authorities erred in taxing the severance fee, which is compensation received for loss of the source of income though the Hon'ble Delhi High Court held that such severance fee is in the nature of capital receipt.
5. On the fact and circumstances of the case and under the provisions of the law, the CIT(APPEAL), ADDL/JCIT (A) - 1, Chandigarh erred in sustaining the order passed u/s 154 of the Income Tax Act, 1961 passed by the C.P.C, which was against the provisions of law and judicial precedence.
6. For these and other reasons which may be adduced at the time of hearing, the Appellant prays this Hon'ble Bench to direct the income tax authorities to allow the claim of the Appellant made in the income tax return filed u/s 139(1) of the Income Tax Act, 1961 for the assessment year 2017-18.
7. The appellant craves permission to add, to alter, to amend and to delete any of the grounds at the time of the hearing.

3. The brief facts of the case are that the Assessee was an employee of Thomson Reuters International Private Limited filed his return of income u/s 139(1) of the Act on 04-07-2017 by declaring Net taxable income

of Rs.14,00,440/- and claimed the refund of Rs.6,13,590/-. As the assessee in the Asst. year under appeal was also subjected to Compulsory Retirement Service (CRS) by the employer, the assessee claimed the severance fee received as compensation on CRS being a capital receipt not liable to tax. This claim of severance fee as compensation on CRS claim as capital receipt is initially based on the honest and bonafide belief by relying the judgment of Hon'ble Delhi High Court in the case of CIT vs. Sharda Sinha in ITA No. 471/2003. The return of the assessee thereafter was processed by CPC u/s. 143(1) of the Act wherein the severance compensation fee amounting to Rs. 19,45,734/- was added to taxable income under the head salary. Against the said intimation, the assessee vide a rectification application u/s. 154 of the act for rectifying the intimation passed u/s. 143(1) of the act and requested to delete the severance compensation fee of Rs. 19,45,734/- being a capital receipt not liable to tax. The AO then passed a rectification order u/s. 154 of the Act dated 27/09/2019 wherein the severance compensation fee of Rs. 19,45,734/- was confirmed to be taxable under head salary after giving the credit of TDS amounting to Rs. 8,66,071/- not given while passing intimation U/s 143(1) of the Act.

4. Aggrieved by the order of the AO passed u/s. 154 of the Act dated 27/09/2019, the assessee has preferred an appeal before the Ld.CIT(A)/NFAC.

5. The ld. ADDL/JCIT(A)-1, Chandigarh dismissed the appeal of the assessee on the ground that appellant was an employee with the company and received an amount of Rs. 19,45,734/- as compensation on termination of his employment on which tax was also deducted as per the provision of section 192 of the Act. Further, in the opinion of ld. ADDL/JCIT(A)-1, Chandigarh, these receipts comes under the definition of "Profit in lieu of salary" as per provision of section 17(3)(i) of the Act which provides that the amount of any compensation due to be received by an assessee from his employer or former employer at or in connection with the termination of his employment or modification of the terms and conditions relating thereto will

be included in the profit in lieu of salary and the same is chargeable to tax as salary income. Further, the Ld.CIT(A) held that the principles governing capital and revenue receipts are not relevant in lieu of the express provision regarding chargeability of the same.

6. Aggrieved by the order of the Ld.CIT(A), the assessee has filed the present appeal before the Tribunal. Further the AR of the assessee has also filed a written submission on 06/12/2024 along with the copy of the Order of the ITAT, "SMC" Bench, Ahmedabad in the case of Sudhakar Ratan Shanker Gautam Vs. The ITO, Ward-1(1)(3), Ahmedabad in ITA No. 1033/Ahd/2024 dated 03/10/2024.

7. The solitary issue that is raised is whether the Ld.CIT(A) is justified in confirming the severance fee received by way of compensation on voluntary retirement under the Compulsory Retirement Scheme (CRS) is regarded as an income receipt or a capital receipt in the hands of the Assessee.

8. Before us, the Ld.AR of the assessee submitted that the severance fee being the compensation for the loss of source of income is a capital receipt & therefore not chargeable to tax. The Ld. AR of the assessee placed reliance on the judgment of the Hon'ble Delhi High Court in the case of CIT vs. Sharda Sinha in ITA No. 471/2003 as well as ITAT Delhi Bench in the case of Ms. Padma Rao vs. CIT in ITA No. 2759/DEL/2023. Further, the Ld.AR of the assessee vehemently submitted that the amount received to compensate for the abrupt loss of the source of income had fatally injured the assessee's only source of income and therefore it is compensation in the nature of capital receipt not liable to tax under the head income from salary.

9. The Ld. DR on the other hand supported the order of the Ld.CIT(A) and submitted that in view of the express provision contained in section 17(3)(i) of the Act regarding chargeability of the same, the question of capital receipt does not arise in the case of the assessee. Further the Ld. DR submitted that the assessee has received the compensation on termination of

the employment on which tax has also been deducted as per provision of section 192 of the Act and therefore the authorities below has rightly held to be taxed under the head income from salary.

10. We have heard the rival submissions and perused the material on record. We have also carefully gone through the written submission filed on 06/12/2024 along with the copy of the Order of the ITAT, "SMC" Bench, Ahmedabad in the case of Sudhakar Ratan Shanker Gautam Vs. The ITO, Ward-1(1)(3), Ahmedabad in ITA No. 1033/Ahd/2024 dated 03/10/2024. Before proceeding further, it is appropriate to take note of section 15, Section 17(1) of the Act as well as section 17(3)(i) of the Act for the purpose of this case which reads as under:

Salaries.

15. *The following income shall be chargeable to income-tax under the head "Salaries"—*

- (a) any salary due from an employer or a former employer to an assessee in the previous year, whether paid or not;*
- (b) any salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer though not due or before it became due to him;*
- (c) any arrears of salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer, if not charged to income-tax for any earlier previous year.*

Explanation 1.—For the removal of doubts, it is hereby declared that where any salary paid in advance is included in the total income of any person for any previous year it shall not be included again in the total income of the person when the salary becomes due.

Explanation 2.—Any salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from the firm shall not be regarded as "salary" for the purposes of this section.

“Salary”, “perquisite” and “profits in lieu of salary” defined.

17. For the purposes of sections 15 and 16 and of this section,—

(1) “salary” includes-

- (i) wages ;*
- (ii) any annuity or pension ;*
- (iii) any gratuity ;*
- (iv) any fees, commissions, perquisites or **profits in lieu of** or in addition to any salary or wages ;*
- (v) any advance of salary;*
- (vi) the annual accretion to the balance at the credit of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under Rule 6 of Part ‘A’ of the Fourth Schedule; and*
- (vii) the aggregate of all sums that are comprised in the transferred balance as referred to in sub-rule (2) of Rule 11 of Part A of the Fourth Schedule of an employee participating in a recognized provident fund, to the extent to which it is chargeable to tax under sub-rule (4) thereof ;*

*.....
.....*

(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;*

*.....
.....*

On plain reading of the Section 15 of the Act which is a chargeable Section, we find that any salary due from an employer or a former employer to an assessee in the previous year whether paid or not is chargeable under the head “Salaries.” Further on plain reading of the section 17(1)(iv) of the Act for the purpose of the section 15 & section 16 of the Act, the Salary includes profits in lieu of salary or wages. Lastly on the plain reading of section 17(3)(i) of the Act, the “profit in lieu of Salary” includes the amount of any

compensation due or received by an assessee from his employer or former employer at or in connection with the termination of his employment. Thus the provisions of the Act are very clear that any compensation due or received from the employer or former employer at or in connection with the termination of employment is profits in lieu of salary chargeable under section 15 of the Act.

10.1 It is an undisputed fact that the assessee was an employee of the Thomson Reuters International Pvt. Ltd. during the Financial Year 2016-17 relevant to A.Y. 2017-18. Further, it is also an undisputed fact that assessee was also subjected to Compulsory Retirement Service (CRS) by the employer during the Asst. year under appeal and the assessee employee in turn has received severance fee by way of compensation amounting to Rs. 19,45,734/-. It is also undisputed fact that the employer has deducted tax at source on the said compensation on the termination of employment as per provision of section 192 of the Act treating the compensation as a part of Salary.

10.2 We are of the considered opinion that the compensation was made to the assessee at or in connection with the termination of his employment. As held by the Apex Court in the case of Commissioner of Income tax v. E.D. Sheppard reported in (SC) (1963) **48 ITR 237**, the expression "Compensation for termination of employment used in section 17(3)(i) of the Act refers to any payment made, whether under a legal liability or voluntarily, to compensate or act as a solatium for the loss of employment suffered by the employee. If the object of the payment is unrelated to the relation between the employer and the employee, it would not fall within the expression "Profit received in lieu of Salary" in Explanation 2 to section 7(1) of the 1922 Act.[corresponding to section 17(3)(i) of the 1961 Act.] In the present case the object of payment of compensation is related to the relation between the employer and the employee then in our opinion it will certainly fall within the expression "Profit received in lieu of Salary".

10.3 Further the Jurisdictional Hon'ble High Court of Karnataka in the case of CIT v. Surendra Prabhu [2005] 279 ITR 402 (Kar.) has held that The expression 'profits in lieu of salary' has to be understood as comprehending not only such things as they signify to their nature and import but also those things which the interpretation clause declares that they shall include. This expression cannot be understood to mean only such things, which the definition or interpretation clause declares that they shall include. Although the judgment was under different perspective i.e. whether on the facts and in the circumstances of the case, the assessee, who has opted for voluntary retirement from service under the Scheme floated by the Bank is entitled to exemption under section 10(10C) of the Act and also relief under section 89(1) of the Act but the observations and analysis are very imperative to decide the present case on hand. The relevant paragraphs are reproduced below for ease of reference & convenience-

“21. Income-tax is a tax on a person in relation to his income. No income can be taxed unless and until there is authority of law to tax that income. Section 2(24) of the Act defines the meaning of the expression 'income'. It is an inclusive definition. Apart from others, the expression 'income' includes the value of any perquisites or profit in lieu of salary taxable under clauses (2) and (3) of section 17 of the Act.

Chapter III of the Act provides for income, which do not form part of the total income. Section 10 of the Act finds a place in Chapter III of the Act. The section deals with "income not included in the total income". It provides, that, in computing the total income of a previous year of any person, any income falling within any of the clauses therein shall not be included. The several clauses in section 10 of the Act specify different incomes, which would ordinarily be included in the total income of the assessee for the purpose of taxation but for such provision. Section 10(10C) of the Act is inserted by Finance Act, 1987, with effect from 1st April, 1987. The reason for introducing this provision is contained in the circular of the Central Board of Direct Taxes explaining the Finance Act, 1987 - [168 ITR (St.) 94]. This clause provides that any amount received by an employee of a public sector; or any other company; or a local authority; or a cooperative society; or a University established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a University under section 3 of the University Grants Commission Act, 1956; or an Indian Institute of Technology within the meaning of clause (4) of section 3 of the Institute of Technology Act, 1961; or any State Government; or the Central Government; or an Institution having importance throughout India or in any State or States, as the Central Government may, by notification in the Official Gazette specify in this behalf; or such Institute of Management as the Central Government may by notification in the Official Gazette specify in this behalf; exempt from income-tax, at the time of his voluntary

retirement or termination of his service, in accordance with any Scheme or Schemes of voluntary retirement or in the case of public sector company referred to sub-clause (1), a scheme of voluntary separation, to the extent that such amount does not exceed five lakh rupees. The second proviso to this sub-clause provides that where exemption has been allowed to an employee under this clause for any assessment year, no exemption thereunder shall be allowed to him in relation to any other assessment year.

Chapter IV of the Act provides for computation of total income. Section 14 of the Act classifies the chargeable income into various heads of income, such as salaries, income from house property, income from business or profession, capital gains and income from other sources. Section 15 of the Act deals with income chargeable to income-tax under the head salaries. Section 16 of the Act provides for permissible or standard deductions allowable under the head salary. Section 17 of the Act provides for definition of salary, perquisites and profits in lieu of salary for the purposes of sections 15 and 16 of the Act. Sub-section (1) of section 17 of the Act defines the meaning of the expression "salary". It is an inclusive definition. The word 'includes' is explained by the Apex Court in the case of P. Kasilingam v. P.S.G. College of Technology. In that, it is stated that the word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The Legislature by using the expression 'includes' immediately after the expression 'salary' certain payments made by an employer to the employee as salary though in the normal connotation those payments could not have been considered as 'salary'. One such payment, which is brought within the meaning of the expression 'salary', is any fees, commissions, perquisites, or profits in lieu of or in addition to any salary or wages. The meaning of the expression 'salary' came up for consideration before the Apex Court in the case of Karamchari Union (supra). In that decision, the Court has observed :

"A reading of clause (1) of section 17 of the Act makes it abundantly clear that the word 'salary' is given an exhaustive meaning as stated in sub-clauses (i) to (vii). The inclusive definition of the word "salary" given in section 17 provides that apart from salary received by the employee, it includes wages, any annuity or pension, any gratuity, any fees, commissions, perquisites or profits in lieu of, or in addition to, any salary or wages, any advance of salary, any payment received by an employee in respect of any period of leave not availed of by him and other payments mentioned in sub-clauses (va), (vi) and (vii). These sub-clauses (i) to (vii) of clause (1) indicates that the Legislature intended to include in salary the specified or named amount paid to the employee in respect of the services rendered by him. Sub-clause (iv) of clause (1) provides for inclusion of four types of payments in the word "salary" - (i) fees, (ii) commissions, (iii) perquisites, and (iv) profits in lieu of or in addition to salary. In common parlance, fees, commissions, perquisites or payments of profits in lieu of salary may not be considered to be salary, but by this inclusive definition of the word "salary", a further inclusive definition is given to the word "perquisite", with which we are not concerned in these appeals. Thereafter clause (3) provides for an inclusive definition of the phrase "profits in lieu of salary". Sub-clause (i) of clause (3), inter alia, includes the amount of any compensation 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. The inclusion of this amount of compensation has a direct connection with the employment or the terms and conditions relating thereto... ." (p. 151) [Emphasis supplied]

22. Having noticed the meaning assigned by the Apex Court of the term 'salary', in our view, it would be appropriate to notice the provisions of section 17(3) of the Act, which in our view, is the section which would assist to answer the issue, which we have framed for our determination in these appeals. Therefore, the said section not only requires to be extracted and reference also requires to be made to the case laws of the Apex Court and other High Courts, which have considered the said provision. The provision reads as under :

"Section 17(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. **

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III. Any amount due to or received, whether in lump sum or otherwise by an assessee from any person-

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

(b)after cessation of his employment with that person."

23. Sub-section (3) of section 17 of the Act provides an inclusive definition of "profits in lieu of salary". The word 'profit' is explained by the Apex Court in the case of Karamachari Union (supra). The words 'profits in the context is required to be understood as a gain or advantage to the assessee'. The Blacks Law Dictionary has defined the meaning of the expression "in lieu of" to mean "instead of or in place of; in exchange or return for". Therefore, 'profits in lieu of salary' would mean a gain or advantage that the assessee would receive instead of or in place of salary. The Legislature again uses the expression 'includes' immediately after the expression 'profits in lieu of salary' to include any amount of compensation due 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 to thereto.

Sub-clause (ii) refers to any other payment other than payments which are excluded under the clause itself, due to or received by an assessee from his employer or former employer or from the provident fund to the extent of which such payment does not consist of contributions of the assessee or interest on such contributions.

24. Under sub-clause (1) of section 17(3) of the Act, the amount of compensation due to or received by an assessee from his employer at or in connection with the termination of his employment is regarded as "profits in lieu of salary". The key words are, "any compensation due to or received by an assessee from his employer or former employer at or modification of the terms and conditions relating thereto." The expression "compensation" is explained by the Apex Court in the case of E.D. Sheppard (supra). Though the decision was rendered prior to the amendment of section 7 of 1922 Act with effect from 1955, still the meaning assigned to the word can be usefully applied to understand the meaning of the expression 'compensation'. By a majority view, the Court has observed, "that 'compensation' in Explanation 2 to section 7(1) of the Income-tax Act does not mean compensation which is payable or compellable at law. Compensation for loss of employment is a well known term. It

means a payment to the holder of an office as compensation for being deprived of profits to which as between himself and his employer he would, but for an act of deprivation by his employer or some third party such as the Legislature, have been entitled."

Proceeding further, the Court has observed :

"That if the object of the payment was not related to the relation between the employer and the employee, it would not fall within the expression "profit received in lieu of salary" in Explanation 2 to section 7(1)."

Even the dissenting note expressed by Justice Raghubar Dayal has also some relevance for the purpose of the case. The dissenting note expressed by the learned Judge is as under :

"The expression 'compensation' itself connotes some payment to make up certain loss suffered by the person getting the compensation. Any sum paid by an employer or former employer to an employee upon termination of his services will be a "payment made solely as compensation for loss of employment" only when it is made in consideration of what the employee can claim as such compensation under the law or the terms of the contract of service. If he cannot claim such compensation, the sum paid to the employee will not be by way of compensation for loss of employment. It is immaterial that the employer pays it or the employee receives it as compensation for loss of employment."

25. What can be deduced from the aforesaid view expressed by the Apex Court is, 'compensation' is an amount received by an employee from his employer or former employer upon termination of his service. The Legislature has not made any distinction whether the amount received by the employee as compensation from his employer at the instance of employer terminating the services of any employee for any reason whatsoever or at the instance of an employee, who wants to curtail his service with the employer by exercising his right to leave the services of his employer.

26. The next pre-requisite under section 17(3) of the Act is that the compensation that is due or received by the assessee from his employer or former employer must be in connection with the termination of his employment or modification of the terms and conditions of the employment. At this stage, we are required to focus on the expressions "at or in connection with the termination of employment or the modification of the terms and conditions of employment". The word "termination from employment" has different shades of meaning. In Service Law Jurisprudence, the words "termination from service" is understood as cessation of jural relationship of employer and employee based on the provisions of terms of service or the Rules or Regulations. When a termination is made in accordance with the contractual terms or the rules, it is known as "termination simpliciter". Termination from service could be by way of compulsory retirement, voluntary retirement, resignation and superannuation.

27. "Salary" as defined by section 17(1) of the Act covers any kind of remuneration received by or due to the employee irrespective of the fact that the payment is received during the period of employment or at the termination of employment. Terminal payments are not actually remuneration for services rendered but are in the nature of compensation for the termination of employment. Such payments, in order to bring them within the tax net, have been given the character of "profits in lieu of salary" and are included in the salary income of the employee by virtue of section 17(1)(iv) of the Act. The expression "profits in lieu of salary" has to be understood as comprehending not only such things as they signify to their

nature and import but also those things which the interpretation clause declares that they shall include. This expression cannot be understood to mean only such things, which the definition or interpretation clause declares that they shall include.

28. Section 17(3)(i) of the Act treats the amount of any compensation due to or received by an employee from his employer or former employer at or in connection with the termination of his employment as "profits in lieu of salary" and brings it within the scope of the tax. The word 'any' in the phrase 'any compensation' indicates both the quantum and the kind of compensation. It may be paid under a termination clause in the contract of service or it may be paid at the time of an unexpected break of employment. Further the motive of the payment of compensation is immaterial. It may be paid in respect of loss of future remuneration or deprivation of future promotion, etc., thereby affecting the employee adversely. The payment of compensation may be voluntary or contractual. It will be taxable irrespective of the question whether the employer is liable to pay compensation in law or not. In sum and substance, the payment of compensation may be made by the employer or former employer at or in connection with the termination of employment. Even if such payment has no connection with the termination of employment, if it is received by the employee at the time of termination of employment, it would fall to be taxed as 'profits in lieu of salary'. The meaning of the phrase 'termination of employment' would cover a termination in the natural course of events, the terms of employment having been completed and period of retirement having been arrived. It would also apply to premature termination of employment and termination by death or voluntary resignation. The termination of employment need not be at the instance of the employer only. It would cover the cases of voluntary retirement of an employee under a scheme framed by the employer. The Apex Court in the case of E.D. Sheppard (supra), has observed that "even the cases of 'voluntary separation' are covered by the scope and connotations of the expression 'termination from service'. The Supreme Court in the case of Santhosh Gupta (supra), has noticed that the term 'termination' embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. The Madras High Court in the case of Visalakshi (supra) has observed that the termination of service can take place either by resignation or by dismissal or by compulsory retirement or on attaining superannuation. There is no justification to confine the meaning of the word "termination" only to cases of either voluntary retirement or on superannuation. A Division Bench of the Karnataka High Court in the case of Management of M.S. Ramaiah Medical College and Hospital v. Dr. M. Somashekar, has noticed the meaning of the expression 'termination' and in that, has observed that "termination of service" is broadly classified into those imposed by way of punishment and those which are not dismissal and removal are terminations. 'Termination' simpliciter refers to a termination in terms of the contract, otherwise than by way of punishment/penalty/ retrenchment.

Another situation which is envisaged in the sub-section is, that, though the employee may continue with his employer, the terms and conditions of service may be rearranged or modified and under the modified terms and conditions, the employee may be paid a lump sum in consideration of the remuneration payable to him during the subsequent years of service being reduced. The lump sum so received by way of compensation would be regarded as profits in lieu of salary and would be taxable. In order to constitute the receipt of compensation as 'profits in lieu of salary' it must come from the employer or former employer. If the receipt or receipts happens to come from an outsider, it would not be covered by the term profits in lieu of salary. At this stage, it may be useful to refer some of the case laws referred to by the learned Counsels for the parties to the lis in regard to the meaning of the expression 'profits in lieu of salary'.

The Madras High Court in the case of G.N. Badami (supra) has stated :

"The provision of sub-clause (i) of clause (3) of section 17 of the Act, in our opinion, includes within its ambit, any compensation due to or received by the assessee from his employer at or in connection with the termination of his employment. In our view, the said provision makes it clear that any compensation received at or in connection with the termination of the employment will be treated as a profit in lieu of salary and therefore, taxable under the head "Salary". (p. 267)

It is also relevant to notice the legislative history behind the provision of clause (3) of section 17 of the Act. Under the Indian Income-tax Act, 1922, the expression "salary" was defined under section 7 of the said Act and Explanation 2 to section 7 of the 1922 Act provided a definition of the term, "profits in lieu of salary". The said Explanation 2 to section 7 of the 1922 Act postulates that a profit in lieu of salary must be an amount of any compensation due to or received by the assessee from the employer or former employer at or in connection with the termination of his employment whether solely as compensation for loss of employment or for any other consideration. When the Income-tax Act, 1961, was introduced in the year 1962, there is a significant omission of the words, compensation for loss of employment or for any other consideration as found in Explanation 2 to section 7 of the Indian Income-tax Act, 1922 in sub-clause (i) of clause (3) of section 17 of the Act."

In Re. P. Arunachalam v. CIT [2000] [241 ITR 827](#), the Madras High Court has stated :

". . . The provisions of section 17(3)(i) of the Act are clear that any compensation received at or in connection with the termination of the employment by its employer, is liable to be treated as profit in lieu of salary. It is not disputed that the amount received is compensation and it was received by the assessee from his employer in connection with the termination of his employment. The conditions prescribed under section 17(3)(i) of the Act are fully satisfied in this case and the amount of compensation received by the assessee is liable to be treated as salary and, therefore, we are of the view that there is no error in the order of the Tribunal in holding that the amount received by the assessee is taxable as salary. . . ." (p. 828)

In Re. CIT v. G.V. Venugopal [2005] [273 ITR 307](#)¹, the Madras High Court has stated :

"The word "salary" as defined in section 17 of the Act includes any profit in lieu of salary, which has been defined in section 17(3) of the Act to include any amount of compensation due or received by the assessee from his employer or former employer in connection with the termination of his employment. Hence, payment under the Voluntary Retirement Scheme is covered by the word "salary", which has been given a very wide definition in section 17. Since the assessee is covered by section 89, he will get both the benefits, which he has claimed for." (p. 319)"

10.4 Therefore, we agree with the view of ld. ADDL/JCIT(A)-1, Chandigarh as these severance compensation was made to the assessee at or in connection with the termination of his employment. Further the object of payment of compensation is related to the relation between the employer and the employee & therefore it will certainly fall within the expression "Profit received in lieu of Salary" as per the provisions of section 17(3)(i) of the Act and therefore liable to be taxed under the head salary in view of the express provision regarding the chargeability of the same. Further, the fact in the case of CIT vs. Sharda Sinha (supra) relied by the assessee are different from the facts of the present case. In the case of CIT vs. Sharda Sinha (supra) as relied upon by the assessee, the assessee was a journalist by profession and was appointed by the foreign correspondent in India of a German news magazine by an agreement at a monthly flat rate honorarium. Either party could terminate the contract at the end of the relevant calendar quarter by giving notice of six weeks. In the original return, the assessee claimed this amount as a revenue receipt but on revising the return, it was claimed to be a capital receipt. There the employer was under no obligation to pay any compensation to the assessee on termination of the contract. However, the compensation of Rs. 53,82,000/- was paid for loss of work place and in consideration of long time association and it was paid to the assessee to compensate the abrupt loss of source of income which was treated as capital in nature. Further, in the case of Ms. Padma Rao vs. CIT (supra), the issue was whether the AO wrongly applied section 28(ii) of the Act in respect of the amount received which is a capital receipt. The AO was of the opinion that compensation is taxable u/s. 28(ii)(e) of the Act read by Board Circular No. 8/2018 dated 26.12.2018. Therefore the issue was whether reference to business u/s. 28(ii)(e) includes profession, which is quite different from the present facts of the case and therefore cannot be applied in the case of the assessee. Lastly the AR of the assessee vide written submission dated 06/12/2024 highly placed reliance on the latest order dated 03/10/2024 of the ITAT, "SMC" Bench, Ahmedabad in the case

of Sudhakar Ratan Shanker Gautam vs. The ITO (Supra) in which we found that although in the paragraph 7.3 at page-6 of the Order, it is held that the Act distinguishes between receipts that are taxable as salary income and those that are considered capital receipts, which are generally not taxable unless explicitly brought within the tax net by specific provisions of the Act but on the other hand held that capital receipts, especially in the context of employment, typically relate to compensation for the loss of a source of income and are generally not taxable, unless specified. In our Opinion considering the express provision of the Act, regarding the chargeability of the same, we find that there is no infirmity in the action of the authorities below in charging the alleged severance compensation of Rs. 19,45,734/- as salary. Further we humbly feel that the coordinate Bench had not considered the observations of the Apex Court in the case of Commissioner of Income tax v. E.D. Sheppard (cited supra) with regard to "Profit received in lieu of Salary" in Explanation 2 to section 7(1) of the 1922 Act. [corresponding to section 17(3)(i) of the 1961 Act.]. The co-ordinate ITAT bench had followed the decision of the Hon'ble Gujrat High Court where as we are bound by the observations as made by the Hon'ble Jurisdictional High Court of Karnataka which were reproduced above for ease of reference.

10.5 In view of the above we find no infirmity in the order of the Id. ADDL/JCIT(A)-1, Chandigarh in concluding that as severance compensation was made to the assessee at or in connection with the termination of his employment, it will fall within the expression "Profit received in lieu of Salary" as per the provisions of section 17(3)(i) of the Act and therefore liable to be taxed under the head salary in view of the express provision regarding the chargeability of the same.

11. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 13th Dec, 2024

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 13th Dec, 2024.
/MS /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.