

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B', CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 249/CHD/2024

निर्धारण वर्ष / Assessment Year : 2017-18

Anju Bala Legal Heir of Shri Om Parkash C/o Dhiman Bansal & Associates, 68, Shiv Shakti Colony, Pinjore 134102	बनाम	The ITO, Ward-3, Panchkula
स्थायी लेखा सं./PAN NO: AAVPP0395C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

(Virtual Hearing)

निर्धारिती की ओर से/Assessee by : Smt. Neelam Dhiman, CA
राजस्व की ओर से/ Revenue by : Dr. Danish Abdullah, JCIT

सुनवाई की तारीख/Date of Hearing : 27.11.2024
उदघोषणा की तारीख/Date of Pronouncement : 31.12.2024

आदेश/Order

Per Krinwant Sahay, AM:

Appeal in this case has been filed by the assessee against
the order dated 17.01.2024 passed by the ld. CIT(A)

[Addl/JCIT(A)], National Faceless Appeal Centre, Delhi, for the Assessment Year 2017-18.

2. Grounds of appeal are as under:-

- 1 *That on the facts and circumstances of the case the order passed by the learned ADDL/JCIT (A)-3 Bengaluru is bad both in the eyes of law and on facts.*
- 2 *The learned ADDL/JCIT (A) erred in dismissing appeal that there was no genuine reason of condonation of delay whereas he was tax illiterate person and Orders in her father colleague cases were passed in Jan 2020 to June 2020 and it came to her knowledge in March 2021 due to Covid 19 restrictions nationwide and when it comes to her knowledge, she immediately filed the appeal on 20.03.2021. So delay be condoned.*
- 3 *The learned ADDL/JCIT (A) erred has erred in having not considering the additional claim for exemption u/s 10(10B) of compensation amounting to Rs.23,92,120/- (Rs. 28,92,120 - Rs. 5,00,000) received on forced retrenchment*

under VRS on closure of HMT Ltd (Tractor Division), instead of exemption u/s 10(10C) of the Income Tax Act wherever there is no bar on appellate authorities to consider the claim of assessee.

- 4 *The learned ADDL/JCIT (A) erred in having not considering the additional claim for exemption u/s 10(10B) of additional gratuity compensation at 2007 scales amounting to Rs. 3,12,490/- (Rs. 8,34,265 - Rs. 5,21,775) received on forced retrenchment under VRS on closure of HMT Ltd (Tractor Division) being part of compensation announced, instead of exemption u/s 10(10) of the Income Tax Act.*
- 5 *That the appellant craves leave to add or amend the Grounds of appeal before the appeal is finally heard and disposed of.*

3. In this case there is a delay in filing of the appeal before the CIT(A). During the proceedings before us, the Id. Counsel for the Assessee has filed a letter dated 12.3.2024 which is as under:-

Dated 12th March 2024

BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL,
SMC BENCH,
CHANDIGARH

Condonation Application

Re: Om Parkash Vs. ITO Ward 3, Panchkula

Ref: ITA NO. /CHD/2024 arising from the Order dated 17.01.2024 of Addl/JCIT(A)-3,
Bengaluru

Most respectfully, we submit as under

The appellant father was tax illiterate and had no knowledge of any taxability or non-taxability of VRS Receipts. He filed return through tax consultant and got refund by claiming relief of 89(1). After retirement he died on 10.12.2018.

His colleague Karam Chand PAN AARPC3483C case was decided on 31.01.2020 and he received his refund on 03.02.2021. He had revised his return in the light of Madras High Court Judgment. He was fully aware of the developments at Panchkula as his case was also under scrutiny and further in appeal.

Because our approx. 300 cases were in scrutiny and later in appeal, we have created a WhatsApp group on 11.08.2018 in the name of hmt Retired Revised ITR as it was not possible for us to inform the clients individually regarding documents required, status of scrutiny cases and appeals.

On 24th January 2020 AO started to post letters regarding attaching the accounts. Here in some cases they have denied the TDS credit to assessee and raised fictitious demand. At this time, we raised a CPGRAMS giving facts and proof of one case and providing list where there was wrong demand raised. On the same day in evening we got call of CIT Appeals Panchkula to fix all those cases for hearing where demand was above 10 Lacs and hearing notices were issued for 27.01.2020 .

On 30.01.2020 order in lead case Prem Pal Vs. Ward 3 Panchkula was passed by Worthy CIT Appeal Panchkula in Appeal No. 128/Pkl/19-20 which were uploaded on portal on 07.02.2020 and it reflected on portal on 08.02.2020.

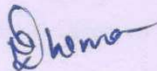
(34)

We informed deciding of appeal in assessee favour on WhatsApp group. On 15.03.2021 Karam Chand met the assessee and informed him about the full exemption of VRS Receipts and advised him to file the appeal. The list of Events in case of filing of appeal is as under:

1.	Cabinet Approval of Closure of HMT Tractor Divison by giving VRS at 2007 scales	27.10.2016
2.	Office Order of Closure of HMT Tractor Divison by giving VRS at 2007 scales	04.11.2016
3.	Date of VRS by petitioner	10.12.2016
4.	Date of Madras High Court Single Bench Judgment	21.03.2017
5.	Date of Madras High Court Double Bench Judgment	29.06.2017
6.	Date of filing ITR	06.07.2017
7.	Date of Processing of ITR	20.11.2017
8.	Date of Dismissal of SLP of Union of India in Supreme Court	19.02.2018
9.	Date of Representation to Income Tax department by HMT Ex Employee Union	26.03.2018
10.	Date of First Scrutiny Notice	08.08.2018
11.	Date of creation of Whatsapp group	11.08.2018
12.	Date of First Adverse Order passed by JAO	29.08.2019
13.	Date of Notice of Attachment by JAO received	24.01.2020
14.	Date of putting CPGRAMS grievance	24.01.2020
15.	Date of Hearing of First Appeal order	27.01.2020
16.	Date of First Appeal Order of Father Colleague	30.01.2020
17.	Date of knowledge of Order to Karam Chand	08.02.2020
18.	Date of knowledge of Order to Petitioner	15.03.2021
19.	Date of Filing Appeal	23.03.2021

Prayer

In these circumstances it is respectfully prayed that kindly condone the delay and allow the claim of assessee here as Learned CIT Appeal has rejected the appeal on grounds of delay and merits.



CA Neelam Dhiman
Counsel of the Assessee

Enclosed:

1. Affidavit

4. The ld. CIT(A) has not accepted the plea of condonation of delay submitted by the Assessee and he has rejected the belatedly filing the appeal before him. The ld. Counsel of the Assessee pleaded before us citing the reason in the form of an affidavit filed and stated that because of the reasons mentioned in the affidavit, the ld. CIT(A) should have accepted the plea of connotation of delay in filing the appeal before him.

5. We have considered the submissions filed before us by the ld. Counsel of the Assessee on this issue and we are of the considered opinion that the delay in filing the appeal before the ld. CIT(A) should have been condoned keeping in view the element of natural justice to the Assessee.

6. The ld. DR relied on the order of the CIT(A).

7. Brief facts of the case, as per the order of the Addl. CIT(A) Bengaluru, are as under:-

HMT Ltd was a Govt of India company. It closed its tractor division in 2016-17, decision was taken in Cabinet meeting in Oct 2016. All employees were

given compulsory VRS. Employees filed their returns claiming exemption of Rs. 5 lacs u/s 10(10B) and relief u/s 89(1) giving employer status as PSU. Madras High Court delivered a judgment in Mar 2017 declaring entire VRS compensation as exempt. We were aware of the case but not claimed as Govt of India went to Supreme Court in the Case. In Feb 2018 Supreme Court dismissed Union of India Appeal. So employees revised the returns reducing their Total Income by VRS Compensation Taxable amount. In the meantime, they come to know that as HMT Ltd is a Govt. Company and all the Gratuity and Leave Encashment was also exempt. All the cases were selected for compulsory scrutiny. Assessee provided proofs to learned Assessing Officer, but they did not consider anything. Some were decided in favour and maximum decided against assessee. All went in appeal. In January 2020 to June 2020 more than 400 Cases were decided in favour of assessee and additions made by Learned AO were deleted by Worthy CIT Appeals. Department has not gone in further appeal and refunds were issued by department up to March 2021 in maximum cases. Assessee belong to same class of person feeling aggrieved and now in appeal before authorities.”

8. The Addl. CIT(A) in his order has given his findings based on the submissions of the Assessee as under; -

“...The assessee has provided press release dated 27.10.2016. in respect of this, following observations are made:-

(i). On going through this press release it is observed that there is no specific mention of purpose and reasons for approving the scheme of VRS/VSS for the employees of HMT Ltd, except stating that their dues are pending. The press release contains a generalized statement about the dues to be paid to the employees and the employee hardship on account of nonpayment of salary etc. It does not speak of any need for special protection to the employees. It also does not suggest of any purpose for the rehabilitation or reasons as to the plight of employees of the HMT ltd. Hence, it can be held that the decision of the Hon'ble High Court in the case of HPF Ltd's employees in treating the VRS receipt as compensation in the hands of the employee is not applicable in the case of employees of the HMT Ltd.

(ii). Therefore, in view of above facts and circumstances, the assessee is not entitled to get the benefit of section 10(10B) even after considering merits of the additional grounds on the following counts:-

(a). That the amount received by the assessee on account of VRS/VSS was not the compensation on termination of employment or compensation on closure of industry i.e. HMT

Tractor Division. On the basis of facts this amount is compensation receipt on account of voluntary retirement.

(b). That assessee was not retrenched in accordance with provisions of Industrial Dispute Act, 1947(I.D. Act) or under any other Act or award in terms of section 10(10B). The order under Industrial Dispute Act 1947 in the case HMT Ltd was passed on 14.2.2017, whereas the assessee accepted the VRS/VSS introduced on 4.11.2016. The assessee had not received payment pursuant to award under I.D. Act, 1947. Hence, the case of the assessee is also not covered by the explanation (a) to section 10(10B).

(c). The assessee's case does not fall under preview of the second proviso to section 10(10B) as the VRS/VSS amount received by him, was not of the nature of compensation received as the Central Government's offer of VRS/VSS announced on 27.10.2016 does not suggest that it was introduced for the need of extending special protection to the employees of the HMT Tractor Division.

d) The appellants case does not fall under the purview of the section 10(10 B) but in the ambit purview of the section 10(10C) of the IT. Act, 1961, as the appellant had voluntarily opted the scheme, of VRS and he has not furnished any evidence opposing the scheme of VPS/VSS. Further, the scheme also provided that employees not opting for VRS/VSS shall be

retrenched. Since he has not been retrenched, the amount received by him is the compensation received on voluntary retirement and accordingly, he is entitled to exemption of Rs.5,00,000/- out of the VRS/VSS receipts.

Therefore, based on the above discussion, the appeal filed on all the grounds is dismissed.”

9. During the proceedings before us, the ld. DR relied on the order of the Addl. CIT(A).

10. During arguments, the ld. Counsel for the Assessee made a submission that the Assessee had already made before the ld. CIT(A). The ld. counsel also submitted that on the similar grounds, many appeals were allowed after dismissal of Central Government Writ by the Hon'ble Supreme Court of India but unfortunately, the Assessee could not use that occasion for itself.

11. We have gone through the facts of the case and the arguments made by the Counsel of the Assessee during proceeding before us. We have also seen the order passed by the ld. ACIT and the arguments made by the ld. DR. We find that the Assessee's appeal for additional claim of exemption u/s

10(10B) of the Act amounting to Rs. 28,92,120/- received at the time of forced retrenchment under VRS on closure of HMT Limited (Tractor Division) as well as the amount of additional gratuity and compensation at 2007 scales again received at the time of Forced retrenchment under VRS on closure of HMT Ltd. (Tractor Division) should be considered as part of compensation announced. It is because in similar cases of force retrenchment from the same company (H.M.T. Ltd., Tractor Division) there are many instances that many employees / assessees have got relief at different judicial Forums. Even the Writ Petition filed by the Central Govt. on the same issue has been dismissed by the Hon'ble Supreme Court of India. Under such circumstances, simply because the Assessee in that case opted for VRS because of clear instruction from the Govt. otherwise would have been forcibly retrenched their case cannot be categorized separately while allowing benefit like other retrenched employees. Therefore, in our considered view, the order passed by the first appellate authority cannot sustained. Accordingly, Assessee's appeal on the above grounds are allowed.

12. In the result, Assessee's appeal is allowed.

Order pronounced on 31 .12.2024.

Sd/-

(SANJAY GARG)
Judicial Member

Sd/-

(KRINWANT SAHAY)
Accountant Member

“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
5. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar