

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

**BEFORE SHRI SANJAY GARG (JUDICIAL MEMBER)
AND
SHRI ASHWANI TANEJA (ACCOUNTANT MEMBER)**

I.T.A. No.6623/Mum/2013
(Assessment Year : 2009-10)

Radhika Mohan Kamat "Aastha", 34, Saras Baug, V.N. Purav Marg, Sion-Trombay Road Deonar, Mumbai-88	vs	ACIT 15(2) Mumbai
PAN : ALQPK4411L		
(Appellant)		(Respondent)

Appellant by	Shri Anil J Sathe
Respondent by	Shri B.S. Bist (Sr DR)

Date of hearing : 28-09-2016

Date of pronouncement : 30-09-2016

ORDER

Per ASHWANI TANEJA, AM:

This appeal has been filed by the assessee against the order of the Commissioner of Income-tax (Appeals)-26, Mumbai [hereinafter called CIT(A)] dt 14-08-2013 passed against the assessment order u/s 1433) dated 11-11-2011 for A.Y. 2009-10 on the following grounds:

"1 The learned CIT (A) erred in confirming the addition made by the Learned Assessing Officer of Rs.15,00,000/- received from M/s Alma Motors Pvt. Ltd.

2. *The learned CIT (A) failed to appreciate that the sum received by the appellant is actually in the nature of reimbursement of expenditure i.e. it is an educational assistance provided to the appellant director and hence not chargeable as income in her hands*

3. *The learned CIT-(A) has did not consider the factual matrix of the case and thereby erred in coming to a conclusion that the appellant director has received benefit from the company*

4. *The learned CIT-(A) erred in not appreciating the ratio of various judicial pronouncements placed on record before him*

5. *The Ld. CIT-(A) failed to appreciate that the said receipt by the director does not satisfy the tests of income and consequently cannot be brought to tax under the residuary head income from other sources merely because it fails the test under other heads.*

6. *The learned CIT-(A) erred in relying on the decision given in Lady Navajbai R J Tata 15 ITR 8 the facts of which are distinguishable from the case of the appellant.*

7. *In the alternative and without prejudice to the above grounds the Learned CIT-(A) has erred in law in not appreciating the fact that the said amount of Rs.15 lacs being taxed as income in the hands of the company - M/s Alma Motors Pvt. Ltd., and the said disallowance having become final, the said addition to the income of appellant will amount to double taxation.”*

2. The solitary issue raised in this appeal is regarding the taxability of a sum of Rs.15 lakhs in the hands of the assessee received by her from the company namely M/s Alma Motors Pvt Ltd in which she was a director, being the amount reimbursed by the company on account of expenses incurred by her for pursuing higher studies in law in London.

3. The brief background and facts of the case are that during the course of assessment proceedings it was noted by the AO that during the year under consideration, the assessee received a sum of Rs.15 lakhs from the aforesaid

company, in which assessee was a director, on account of reimbursement of the expenditure incurred by the assessee on her higher studies abroad in London. The AO treated this amount as taxable in the hands of the assessee u/s 2(24)(iv) r.w.s. 56 of the Act. Being aggrieved, the assessee filed appeal before the Ld. CIT(A) and filed detailed submissions along with evidences that the impugned amount could not be taxed as income in the hands of the assessee under any provisions of the Act. But, Ld. CIT(A) was not satisfied with the submissions of the assessee and, therefore, he endorsed the order of the AO and confirmed the addition made by the AO by dismissing the appeal of the assessee. Being aggrieved, the assessee is in appeal before the Tribunal.

3. During the course of hearing before us, the Ld. Counsel vehemently submitted that order of Ld. CIT(A) is highly unfair and unjustified in as much as the assessee had requested for admission of few additional evidences showing that the entire amount has been refunded by the assessee to the said company and, therefore, it cannot be said that any benefit was received by the assessee. It was further submitted that the disallowance was made by the AO of the said company while passing assessment order of the said company by treating the expenses incurred as incurred for non-business purposes. The assessment order of the said company has attained finality as the said company has withdrawn appeal filed against the said assessment order before the Tribunal. Thus, in the given facts of the case, no prejudice is caused to the income tax department as there is no revenue leakage. He submitted before us requisite evidences indicating refund of the entire money by the assessee to the said company aggregating to Rs.1,07,10,000/-. He also submitted copy of Board's Resolution indicating that when the amount was disbursed to the assessee by the company, the intention was that the assessee shall work in the

interest of the company after completing her studies. Therefore, it was not an open offer; the amount was given in the form of a liability which was to be discharged by the assessee by serving the company on completion of her studies abroad. Thus, the amount was given against a consideration. In addition to that it was also contended by the Ld. Counsel that the impugned amount is not hit by the provisions of section 2(24)(iv) since the payment has been made by the company in cash to the assessee, whereas to be covered under the said provisions, the payment should have been made directly to third party by the company. In support of this proposition, he relied upon the judgments of Hon'ble Delhi High Court in the case of Krishan Bans Bahadur vs CIT 316 ITR 411 (Del) and Hon'ble Supreme Court in the case of CIT vs Mafatlal Gangabhai & Co Pvt Ltd 219 ITR 644 (SC). It was pleaded by him that full justice has not been given to this case by Ld. CIT(A). Neither the law has been properly appreciated nor has it been applied correctly and, therefore, the addition deserves to be deleted.

4. Per contra, the Ld. DR vehemently opposed the submissions of the assessee and submitted that when the amount was given, it was in the nature of benefit and, therefore, it has been rightly brought to tax by the AO. But, Ld. DR did not negate or controvert the evidences submitted by the assessee proving refund of entire money by the assessee to the said company as well as factum of the resolution having been passed by the said company at the time of reimbursement of expenditure by the said company to the assessee.

5. We have gone through the orders of the lower authorities, evidences brought before us and submissions made by both the sides. In this case, it has been vehemently contended by the assessee that in fact, the entire money has been refunded by the assessee to the said company. The assessee tried to

furnish the evidences before the Ld. CIT(A) which were not considered by him. The Ld. Counsel also placed on record before us, the copy of the Board Resolution indicating that when the amount was given to the assessee, there was an understanding that the assessee shall serve the company after completing her studies. It is noted by us that the assessee has treated this amount as liability in the sense that after completing the studies she was committed to work with the company. It is evident from the conduct of the assessee when she has refunded the entire money to the said company aggregating to Rs.1,07,10,000/-. In our opinion, these facts have material bearing upon the issue in hand. Therefore, these must be considered by the lower authorities before taking any decision in this regard. Ld. Counsel has vehemently contended that there is no revenue leakage since entire money received by the assessee stands repaid to the said company. Further, the disallowance made in the hands of the company has attained finality. Evidences in this regard were not available before Ld. CIT(A). The order of withdrawal of appeal by the said company from the Tribunal was not readily available with the Ld. Counsel and therefore, it could not be placed before us. Under these circumstances, we find it proper to send this issue back to the file of the AO with direction to give opportunity of hearing to the assessee to place all these details and evidences as may be considered appropriate as per law and facts before the AO. The AO shall take into account all the documentary evidences and submissions as may be placed on record by the assessee and after taking into account all the facets of the issue and the judgments that have been relied upon by the Ld. Counsel before us or as may be placed before the AO before deciding this issue afresh. With these directions, this issue is sent back to the file of the AO.

6. As a result, the appeal may be treated as allowed, for statistical purposes.

Order pronounced in the court on this _30th day of September, 2016.

Sd/- (SANJAY GARG) JUDICIAL MEMBER	Sd/- (ASHWANI TANEJA) ACCOUNTANT MEMBER
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Mumbai, Dt: 30th September, 2016

Pk/-

Copy to:

1. The appellant
2. The respondent
3. The CIT(A)
4. The CIT
5. The Ld. Departmental Representative for the Revenue, D-Bench

(True copy)

By order

ASSTT.REGISTRAR, ITAT, MUMBAI BENCHES