

आयकर अपीलीय अधिकरण, 'एस.एम.सी' 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL ,
'SMC' 'C' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष
Before Shri A. Mohan Alankamony, Accountant Member

आयकरअपीलसं./I.T.A.No.1480/Mds/2016

(निर्धारणवर्ष / Assessment Year: 2012-13)

Shri S. Srinivasan, "Subam", 97/G/C/5, Teacher's Colony, 2 nd Street, 9-A, Palayamcottai Road, West, Tuticorin – 628008	Vs	The Income Tax Officer, Ward-4, Tuticorin
PAN: AWUPS5614C		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri V.S. Jayakumar, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Shri B. Naveen Kumar, JCIT

सुनवाईकीतारीख/Date of hearing	:	06.02.2017
घोषणाकीतारीख /Date of Pronouncement	:	23.02.2017

आदेश / ORDER

This appeal by the assessee is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-1, Madurai dated 23.03.2016 in ITA No.0018/2015-16 passed u/s. 250(6) r.w.s.143(3) of the Act for the assessment year 2012-13.

2. The assessee has raised several elaborate grounds in his appeal, however the crux of the issue is that the Ld. CIT(A) has erred in upholding the

order of the Ld. AO who have disallowed the exemption u/s. 10(14) of the Act, thereby resulting in addition of Rs.35,54,456/-.

3. The brief facts of the case are that the assessee is an individual earning salary income from M/s. Halliburton Offshore Services Inc., Mumbai filed his return for the relevant assessment year on 30.08.2012 admitting his income as Rs.8,55,743/-. Initially, the return was processed u/s. 131(1) of the Act, and subsequently the case was selected for scrutiny under CASS and thereafter the assessment was completed u/s. 143(3) of the Act on 30.03.2015 wherein the Ld. AO made certain additions, amongst which one of the addition was due to disallowance of exemption claimed by the assessee u/s.10(14) of the Act with respect to offshore bonus received amounting to Rs.35,54,456/-. The reasons for the disallowance made by the Ld. AO are as follows:

1. The exemption U/s. 10(14) of the Act was not allowed by the tax-deductor viz., the employer of the assessee in the form 16A at the time of payment of salary.
2. The financial manager of the employer company did not confirm the nature of payment, hence it could not be ascertained whether the assessee is eligible for deduction u/s. 10(14) of the Act.
3. The pay slip of the assessee clearly mentions that the payment is only towards offshore bonus and not offshore allowance as claimed by the assessee.

4. The assessee had not claimed such deduction for the earlier assessment years against such payment received.

4. On appeal, the Ld. CIT(A) confirmed the order of the Ld. AO by observing as under:

“3.3. I have considered the submissions of the representative and perused the assessment order. Admittedly, the appellant received offshore bonus on which tax was deducted at source by employer without allowing any exemption. Even while filing returns for assessment years 2008-09 to 2010-11, the appellant offered the offshore bonus for taxation. Only from assessment year 2010-11 onwards, the appellant claimed that offshore bonus is exempt u/s. 10(14)(ii). As per Sec.10(14)(ii) only the prescribed allowances to the extent prescribed are exempt from tax. However, as per Rule 2 BB(2) offshore bonus is not exempt u/s 10(14)(ii). The representative relied on the proviso to section 10(14)(ii) to argue that limits prescribed in Rule 2 BB(2) shall not be applicable in a case where the proviso is applicable. I find that this argument of the assessee is totally misplaced.

3.3.1 As per section 10(14)(ii) only such allowances which are prescribed in Rule 2BB(2) to the extent specified in the above rule are exempt. When the proviso to section 10(14)(ii) is invoked, the assessee will not get any exemption at all as no exemption can be allowed in respect of personal allowances to remunerate or compensate for performing duties unless such allowance is related to the place of his posting or residence. This means that when the proviso is invoked, the appellant will not get any exemption and the argument of the representative that when the proviso is invoked the limits prescribed under Rule 2BB(2) cannot be applied is totally misconceived. I, therefore, find that the assessing officer has correctly taxed the bonus as the term “salary” includes bonus and the same is not exempt under any provision of the IT Act. The addition is confirmed.”

5. Before us, the Ld. AR submitted that the assessee had received the allowance / bonus, be whatever name it may be called, specifically to meet the

expenses exclusively incurred for performing his official duties. He further requested that the matter may be remitted back to the file of the Ld. AO, so that the assessee would be able to produce the bills and vouchers evidencing the expenses incurred by him during the course of employment. He further submitted that the assessee had performed his duties offshore due to which such benefits was extended by the employer considering the expenditure he has to incur solely for performing his official duties. The Ld. AR also relied on the decision of the Chennai Bench of the Tribunal in ITA No.425/Mds/2016, order dated 06.05.2016, wherein the Tribunal had taken a liberal view considering the facts and circumstance of the case on the identical issue.

6. The Ld. DR on the other hand vehemently argued in support of the orders of the Revenue authorities and requested for confirming their orders.

7. I have heard the rival submissions and carefully perused the materials available on the record. On reading the provisions of Section 10(14) of the Act, I find merit in the submission of the Ld. AR. The provisions of Section 2(14)(i) and (ii) of the Act, specifically provide exemption towards any special allowance or benefits received by the assessee in order to meet his expenses incurred exclusively for performing his official duties or for the purpose of the business of the assessee. Thus there is no scope for the assessee to enrich himself from such benefit derived from the employer. Now, it is up to the assessee to establish that the assessee has incurred certain expenditure

towards which he has received offshore bonus / allowances. Since the Ld. AR had requested to remit the matter back to the Ld. AO for verifying this aspect, I do not find any harm in complying with his request. Therefore in the interest of justice, I hereby remit the matter back to the file of Ld. AO afresh and also consider the matter in a realistic manner by examining the expenses incurred by the assessee and thereafter allow exemption in accordance with merit and law. While doing so, the Ld. AO shall also take cue from the order of the Tribunal cited by the Ld. AR supra.

8. In the result the appeal of the assessee is allowed for statistical purposes as indicated herein above.

Order pronounced in the court on the 23rd February, 2017.

Sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 23rd February, 2017

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.