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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Oct-06-2006

Judge : G Veerabhadrappa, Vice, R Yadav

Appellant : Sam Patel

Respondent : ito

Judgement :

1. The assessee is in appeal before us against the order of learned Commissioner (Appeals) XXIX, Mumbai dated 28-2-2003 passed for assessment year 1997-98. The first grievance of assessee relates to reopening of the assessment under Section 147 of the Income Tax Act.

The learned Counsel for the assessee at the time of hearing did not press this ground of appeal, hence it is rejected.

2. The next grievance of assessee relates to taxability of Rs. 22 lakhs.

3. The brief facts of the case are that assessee has joined the services of M/s. Eagle Shipping Agencies (P.) Ltd. in 1975. On 1-5-1996 he has resigned from the company and at that time he was working as a District Sales Manager. His retirement. benefits were granted to him.

On 22-7-1996 the company had paid a sum of Rs. 22 lakhs, which has been treated by the assessee as ex gratia payment voluntarily paid by the employer without being any obligation to pay the same. Hence assessee claimed this

amount as exempt from tax. The learned assessing officer rejected the contention of the assessee and discussed the issue in detail.

4. On appeal learned first appellate authority again appreciated all the contentions raised by the assessee and in a well reasoned order upheld the order of the assessing officer.

5. We have heard learned representatives of the parties and gone through the record carefully. This amount of Rs. 22 lakhs has been taxed under Section 17(3)(1) of the Income Tax Act by the assessing officer, hence it is imperative upon us to first have a look on this provision, which read as under: (i) the amount of any compensation due to or received by an assessce from his employer or former ernployerat 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 assessee or interest on such contributions or any sum received a Keyman insurance policy including the sum allocated by way of bonus on such policy.

.-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- While taking us through this provision the learned Counsel for the assessee emphasized that some of Rs. 22 lakhs received by the assessee is not a profit in lieu of salary as per the provisions of Section 17(3)(i), because what the assessee received was ex gratia payment for his meritorious service on his resignation and not a compensation for loss of his service. He further contended that Sub-clause (3) which cover such type of sum has been brought to statute by the Finance Act, 2001 with effect from assessment year 2002-03. Since the Sub-clause (3) is not with retrospective effect, therefore, the ex gratia payment received by the assessee is not taxable. He relied upon the following judgments:Asstt. CIT v. Prakash G. Heblkar On the other hand, learned

Departmental Representative relied upon the orders of the revenue authorities below.

6. On due consideration of the contentions of Learned representatives as well as on perusal of the record we find that the employer of the assessee treated this payment as business expenses and claimed the deduction. The receipt of Rs. 22 lakhs is straight away associated with the employment of the assessee. Had there not been any relationship between him and the company as of employer and employee then assessee would have not received any such payment. The expression 'profit in lieu of salary, as defined in Clause (i) of Sub-section (3) of Section 17 would take this payment in its embrace because it includes the amount in compensation due to or received by assessee from an employer or former employer at or in connection with termination of his employment or the modification of the terms and conditions relating to employment. The learned Counsel for the assessee has tried to restrict the meaning of "profit in lieu of service" as relating to compensation only on termination of the service, but in our opinion the termination referred to in Section 17(3)(i) would mean relinquishment of the job, either voluntarily, resignation or on attaining the superannuation.

This payment has been made just after two months from relinquishment of the job. Therefore, it is closely associated with the employment. The learned authorities below have rightly taxed this amount. At the time of hearing we have gone through the case laws relied upon the learned Counsel for the assessee and pointed out to him that none of the case law is applicable to the facts of the present case. They all are distinguishable. Thus the appeal of the assessee is devoid of any merit, it is dismissed.

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