IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH
(Virtual Court)
Before: Shri Mahavir Prasad, Judicial Member
And Shri Amarjit Singh, Accountant Member

ITA No. 294/Ahd/2018
Assessment Year 2014-15

The Dy. CIT, Circle-2(1)(1), Baroda (Appellant)	Vs	Shri Rajamannar Thennati, Sun Pharma Advance Research Centre, SPARC, Tandalj, Vadodara-390020 PAN: AAYPT0765D (Respondent)

Revenue by: Shri Lalit P. Jain, Sr. D.R.
Assessee by: Shri Bhavin Marfatia, A.R.

Date of hearing : 20-10-2020
Date of pronouncement : 04-11-2020

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2014-15, arises from order of the CIT(A)-2, Vadodara dated 15-11-2017, in proceedings under section 143(3) of the Income Tax Act, 1961; in short "the Act".

2. The Revenue has raised following grounds of appeal:-

"1.1 That in the facts and circumstances of the case and in law, the Ld. CIT (A) erred in deleting the addition towards income from salary.

1.2 That in the facts and circumstances of the case and in law, the Ld. CIT (A) erred in deleting the addition towards salary without appreciating the following facts stated by the assessee, which showed that the amount added was also received, and was due, in the assessment year under consideration, and the refund became due only in later years:

(i) This amount had been approved by the Annual General Meeting of the employer company on 31.7.2012.
(ii) The employer company had made a second representation dated 30.10.2014 to the Government for approval of the excess amount even after the Government approved remuneration of Rs.84 lakh only.
(iii) It was only much later, on 3.2.2016, that the Board of the employer company decided that the excess amount should be refunded by the assessee and this decision was conveyed by the employer to the assessee vide communication dated 24.2.2016.
(iv) The excess amount was refunded only on 29.2.2016 and 15.3.2016.
(v) The assessee had not stated that any interest was charged by the employer even though the amount was substantial, for the period this was used by the assessee.
(v) The employer company has not revised its return of income for the asstt. Year under consideration and chose to declare the said recovery from the assessee, as prior period income, in the year in which it has received the refunded amount.

1.3 That in the facts and circumstances of the case and in law, the Ld. CIT (A) erred in deleting the addition towards salary without appreciating that alternatively and without prejudice, this amount was taxable under section 15(b) even if considered as 'not due'.

1.4 That in the facts and circumstances of the case and in law, the Ld. CIT (A) erred in deleting the addition towards salary without considering that alternatively and without prejudice, the perquisite value of interest was taxable as the assessee had not stated that any interest was charged by the employer even though the amount was substantial, for the long period this was used by the assessee.

Relief claimed in appeal

It is prayed that the order of the CIT (Appeals) on the above issue be set aside and that of the Assessing Officer be restored."

3. All the grounds of appeal filed by the Revenue are interconnected to the issue of deleting the addition towards salary, therefore, for the sake of convenience, all these grounds of appeal are adjudicated together as under:-

4. The fact in brief is that the assessee has filed return of income on 24th July, 2014 declaring total income at Rs. 3,34,54,360/-. Subsequently, the assessee has filed revised return of income on 29th March, 2016 showing

total income of Rs. 1,34,88,102/-. The case was subject to scrutiny assessment and notice u/s. 143(2) was issued on 20th Sep, 2016. The assessee was working as a whole time director of M/s. Sun Pharma Advance Research Company Ltd. and has declared the source of income from salary, capital gain and income from other sources. During the course of assessment, the Assessing Officer observed that assessee has reduced his income from salary from Rs. 3,29,28,217/- to Rs. 1,29,61,958/- in the revised return of income. On query, the assessee explained that he was appointed as whole time director in the annual general meeting of the company dated 31st July, 2012 with the maximum salary of Rs. 3.5 crores per annum. Since there was limit for payment of remuneration to the whole time director as per the Company Act, 1956, Ministry of Corporate Affairs, Government of India had approved less remuneration and accordingly, he refunded the excess amount of salary to the company. The Assessing Officer has also verified these facts from M/s. Sun Pharma Advance Research Company Ltd. and it has confirmed vide letter dated 10th Nov, 2016 that the refund was received by the company in F.Y. 2015-16. The company has also submitted that it had approached the Central Government for reconsideration of remuneration paid to Shri Rajamannar Thennati and the same was not approved by the Central Government. The said refund was received and accounted for by the company in F.Y. 2015-16. However, the Assessing Officer was not agreed with the submission of the assessee and he was of the view that salary due, whether received or not , and also salary paid or allowed to the assessee whether due or not is chargeable to income tax as income from salary. Further under the provision of the act, the taxability of salary has been provided on due basis or payment basis

whichever is earlier. Therefore, the Assessing Officer has stated that the total salary originally received by the assessee was to be taxed as income from salary and accordingly, the amount of Rs. 1,99,56,259/- (Rs. 3,29,28,217/- – Rs. 1,29,61,958/-) was added to the total income of the assessee.

5. Aggrieved assessee has filed appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee. The relevant part of the decision of the ld. CIT(A) is reproduced as under:-

> *"4. I have carefully considered the facts on records, submission of the Ld. Authorized Representative and decisions relied upon by him.*
> *4.1.* ***Ground No. 1 to 4*** *are pertaining to addition of Rs. 1,99,66,259/- being the amount of salary refunded to the employer company. Undisputedly, the appellant was working as Whole Time Director (WTD) with Sun Pharma Advanced Research Company Ltd. (SPARCL) and his remuneration was fixed at maximum salary of Rs.3,50,00,000/- in AGM dated 31.07.2012 subject to the following conditions:-*
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> > *"Minimum Remuneration - In the event of loss or inadequacy of profit in any financial year, Dr. T. Rajamannar should be entitled to receive a total remuneration including perquisites, etc. not exceeding the salary limits as approved by Remuneration Committee and by the Central Government, where necessary as minimum remuneration".*
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> *In view of the above, employer company made a reference to the Central Government and the Central Government vide its letter No. SRN B82817776/2013-CL-VII dated 30.12.2013 approved appointment as a Whole Time Director for a period from 04.06.2013 to 03.06.2016 at a maximum remuneration of Rs.84,00,000/- per annum. Thereafter, the employer company made further representation before the Ministry of Corporate Affairs on 30.10.2014 for enhancement of the above mentioned limit of maximum remuneration. However, such request was rejected and accordingly the employer company vide letter dated 24.02.2016 requested for refund of excess remuneration paid to the appellant for F.Y. 2013-14 at Rs.199.66 lakhs and for F.Y. 2014-15 at Rs.14.79 lakhs aggregating to Rs.214.45 lakhs. In response to this recovery letter, the appellant has refunded Rs.1,50,00,000/- vide cheque No. 276237 dated 29.02.2016 and Rs.64,45,000/- vide cheque No. 276240 dated 15.03.2016 of Axis Bank Ltd. Both the cheques are duly debited in the bank account of the appellant. It is worthwhile to mention here that the above factual position is not in dispute.*
> *4.1.1. Therefore, from the above factual position, it emerges that the entitlement to receive remuneration including perquisite is governed by the provisions of Companies law and hence is to be approved by the Remuneration Committee of the Central Government. In the case of appellant, Government of India, Ministry of Corporate Affairs vide letter dated 30.12.2013 has approved total remuneration of Rs.84,00,000/- per annum for the period from 04.06.2013 to 03.06.2016 u/s. 198, 269, 309 & 310 of the Companies Act, 1956 and hence during the year under consideration,* ***the remuneration more than the amount approved was not at all due to the appellant.*** *However, the employer company has paid the higher remuneration in anticipation of revision in the limit fixed as above. The Ld. Authorized Representative has vehemently relied upon the decision of Hon'ble Delhi High Court in the case of* ***CIT Vs. RaghunathMurti (2009) 178 Taxman 144 (Del.)*** *wherein it was held that since the assessee has refunded excess amount of remuneration in view of*

legal requirement contained in the provisions of Companies Act, 1956, the same could not be held as income of the assessee. I find that this decision pertained to assessment year 1998-99 and the assessee in the AGM dated 05.05.1997 was appointed as Managing Director w.e.f. 10.04.1997. The originally salary of Rs.18,75,329/- was paid and accordingly Return of Income was filed. However, since there was no profit or the profit was inadequate, the remuneration was reduced as per the provisions of section 309(5A) and 309(5B) r.w.s. II of Part-II of Schedule XIII of the Companies Act, 1956 to Rs.8,58,217/-. Accordingly, assessee refunded excess salary of Rs.10,17,112/- and as a result thereof revised return was filed on 16.08.1999. In view of the above facts, the Hon'ble Court has held that the refund of salary was neither voluntarily nor was it for any extraneous consideration and in fact, the refund was made merely with a view to comply with the provisions of Companies Act, 1956. Therefore, net amount of the salary was only taxable. The facts of the case of the appellant before me, are identical and hence ***I also hold that remuneration to the appellant was not due more than what was approved by the Government of India, Ministry of Corporate Affairs,*** *New Delhi and hence amount of the refund was not voluntarily but to comply with the provisions of Companies Act, 1956. Accordingly, I further hold that only the net amount of the salary after deducting the refund amount is taxable and hence the addition made by the Assessing Officer is directed to be deleted. Thus, appellant succeeds on this account."*

6. During the course of appellate proceedings before us, the ld. Departmental Representative has supported the order of Assessing Officer. On the other hand, ld. ld. counsel has supported the order of ld. CIT(A) and placed reliance on the decision of Hon'ble High Court of Delhi in the case of CIT Vs. Raghunath Murti (2009) 178 taxman 144 (Del).

7. We have heard both the sides and perused the material on record. The assessee was employed with Sun Pharma Advance Research Co. Ltd. as whole time director of the company with maximum salary of Rs. 3.5 crores as per the resolution passed in the annual general meeting of the company dated 31st July, 2012. Since there was limit for payment of remuneration to the whole time director as per the Company Act, 1956, therefore, the company has made an application to the Ministry of Corporate Affairs, Govt. of India for approving the salary of the whole time director as per the resolution passed in the annual general meeting dated 31st July, 2012. However, the Central Government has approved the salary of the whole time director at a lesser amount. Thereafter, the company had made second

application to the Central Government to approve the excess salary, however, no response was received from the Central Government. Therefore, the assessee was asked to refund the excess salary of Rs. 2.14 crores out of Rs. 1.99 crores pertained to the year under consideration. The assessee has refunded the excess amount of salary to the company and filed revised return of income showing the actual amount of salary received as approved by the Ministry of Corporate Affairs, Govt. of India. However, the Assessing Officer has taxed the excess amount as salary income on the ground that the amount was received by the assessee. The ld. CIT(A) has deleted the addition holding that refund of salary by the assessee was not voluntary but was to comply with the legal requirements of law, therefore, the same cannot be considered as income assessable to tax. The ld. CIT(A) has also placed reliance on the decision of Hon'ble Delhi High Court referred by the learned counsel in the case of CIT Vs. Raghunath Murti (2009) 178 taxman 144 (Del) wherein it is held since the assessee has refunded excess amount of remuneration in view of legal requirement contained in the provisions of Companies Act, 1956, the same could not be held as income of the assessee. Similarly in the case of the assessee, the Central Government had decided the remuneration according to the provisions of Companies Act, 1956 and the refund of the salary was not voluntary but was to comply with the legal requirement of law. We find that the facts and issue involved in the case of the assessee are similar to the case of the CIT Vs. Raghunath Murti (2009) 178 taxman 144 (Del) adjudicated by the Hon'ble Delhi High Court as referred supra in this order. In the light of the decision of the Hon'ble Delhi High Court as supra, we consider that the refund was made merely with a view to comply with the provisions of

Companies Act, 1956, therefore, we do not find any infirmity in the decision of ld. CIT(A). Accordingly, the appeal of the Revenue is dismissed.

8. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 04-11-2020

Sd/-	**Sd/-**
(MAHAVIR PRASAD)	**(AMARJIT SINGH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad : Dated 04/11/2020

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद