

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.2095/Mum/2021
(Assessment Year :2017-18)**

| | | |
|---|-----|---|
| Suryaji Shriram Patekar Room No.210, Building-03 Mhada Colony, Dnyananadeep C.H.S. Near R.N.A. Park, R.C.Marg Chembur, Mumbai-400074 | Vs. | Assistant Commissioner of Income Tax Circle 34(3) Bandra Kurla Complex Bandra (E) Mumbai – 400 051 |
| PAN/GIR No.AKHPP0259P | | |
| (Appellant) | .. | (Respondent) |

| | |
|------------------------------|-------------------------|
| Assessee by | Shri Ashish Thakurdesai |
| Revenue by | Shri Avanish Tiwari |
| Date of Hearing | 09/05/2022 |
| Date of Pronouncement | 19/05/2022 |
| | |

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.2095/Mum/2021 for A.Y.2017-18 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-46, Mumbai in appeal No.CIT(A)-46, Mumbai/10364/2019-20 dated 20/09/2021 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 26/12/2019 by the Id. Asst. Commissioner of Income Tax-Circle-34(3), Mumbai (hereinafter referred to as Id. AO).

2. The grounds raised by the assessee are as under:-

“1. On facts, in circumstances of the case and in law, the National Faceless Appeal Centre (NFAC) erred in confirming relief of Rs.2,97,711/- allowed by learned A.O. under section 89(1) of the I.T. Act, 1961 read with Rule 24A(1)(c).

2. On facts, in circumstances of the case and in law, the National Faceless Appeal Centre (NFAC) ought to have allowed relief under section 89(1) read with Rule 21A(1)(a) amounting to Rs.15,96,688/-.

3. The appellant craves leave to add, alter, modify or delete any of the above Grounds of Appeal.”

3. We have heard rival submissions and perused the materials available on record. The assessee e-filed his return of income on 30/07/2017 declaring a total income of Rs.58,37,970/-. Subsequently, the assessee filed revised return of income on 22/05/2018 declaring total income of Rs.58,59,880/-. The return was processed u/s 143(1) of the IT Act, 1961 and thereafter the case was selected for scrutiny. Notice u/s 143(2) was issued on 09-08-2018. Notices u/s 142(1), along with questionnaire were issued from time to time owing to change of incumbent of office and the same were served on the assessee. All the notices have been issued electronically to the assessee and the response of the assessee has also been received electronically.

3.1. The submissions made by the assessee electronically have been examined. The case has been selected for limited scrutiny to examine the issue - relief u/s 89. The relevant details on this issue have been called for and placed on record. The assessee has submitted Form 10E in support of his claim of relief u/s 89(1), along with copy of Form 16 issued by the employer, Century Textiles and Industries Ltd. A note regarding

the background of the case has also been submitted, which is summarized as under.

3.2. M/s Century Textiles and Industries Limited, hereafter referred to as the 'Company', after incurring heavy losses shut down its Worli Textile Mill unit in 2008. Around 6,300 of its 6600 of the mill workers opted for the voluntary retirement scheme, however 275 workers had opposed the closure of the mill. The assessee is one of the 275 who did not opt for the VRS scheme declared by the Company on 13/11/2006.

3.3. The Company, in its application to the Labour Commissioner inter-alia offered to pay an ex-gratia amount of compensation to each of the balance 275 employees, provided they accept the closure and termination of their services without agitating the issue or obstructing the development of the entire mill land. The company offered to earmark a piece of land admeasuring 1.08 acres out of the total mill land which would not be developed or otherwise dealt with till the entire amount of all the employees have been paid.

3.4. The said application was decided by the Labour Commissioner vide his order dated 11.01.2008 granting permission to the Company to close down its textile mill unit at Worli. Accordingly, by notice dated 12/1/2008, the unit was closed down and the services of all the 275 employees terminated w.e.f 12/1/2008. The Government of Maharashtra vide letter No.TPB-4308/317/CR/182/08/UD011 dated 30/9/2008 addressed to the Municipal Corporation of Greater Mumbai imposed the following conditions on the Company, to Safeguard the interests of the 275 workers who had not opted for VRS:

- i. The plot measuring 1.08 acres was to be reserved for the 275 ex-workers till the last of these workers completes the age of 63 years and till then the plot cannot be sold or developed.
- ii. If the Company fails to effect ex-gratia payment to the ex-workers as per the provisions of its undertakings, the Company would not be entitled to sell or develop the said plot.

3.5. Accordingly, the ex-workers barring a few, entered into individual agreements with the Company confirming the terms and conditions specified above. As per the terms of agreement, between the Company and the individual workers, it was specifically agreed that each of the 275 ex-workmen would be paid an ex-gratia amount per month on the condition that they would not obstruct the development of the entire mill land (except 1.08 acres of land). By the agreement, the ex-worker accepted the closure of the mill and also accepted his consequent termination of service and also agreed that the assessee be treated as left employment and has given up his right of employment. Clause 7 of the agreement also specified that any time in the future, if the second party, ie, the individual worker, decided to accept a lump sum amount in lieu of the amount agreed to be paid, then both parties would be free to settle the same mutually.

3.6. The company entered into a Supplementary Agreement dated 21-11-2016 individually with the ex-workers with the aim of settling the matter forever whereby, each ex-worker agreed to accept a lump sum amount in lieu of the remaining years of service upto 63 years of age. As per the terms of the agreement, the assessee has agreed to fore-go all rights, title or interest in the earmarked land of 1.08 acres and the Company

shall continue to be the absolute owner of the earmarked land. The Company also confirmed that the payment of one time lump sum ex-gratia amount was towards full and final settlement and no claim would lie against any remuneration, compensation, ex-gratia or any other benefits.

3.7. In accordance with the Supplementary agreement dated 06-01-2017, the Company has computed the total dues payable by the Company to the assessee till he attains 63 years of age to be Rs, 57,75,006/-. The company has paid the 'one time lump-sum ex-gratia amount' of Rs.57,75,006/- which include TDS Rs.16,30,453/- as per the provisions of Section 192 of the Income Tax Act, 1961. The Company in the said agreement has explained that the onetime lump sum ex-gratia amount is deemed 'salary' paid to an ex-employee in advance within the meaning of the provisions of the income Tax Act, 1961, it has therefore, deducted tax at source in accordance with the relevant provisions of the Income Tax Act, 1961, as stated above. Form 16 has been duly issued to the assessee by the Company for the relevant F.Y 2016-17 certifying deduction of tax.

3.8. In the return of income for the A.Y 2017-18, the assessee has claimed relief u/s 89(1) of the Act on the compensation received by him, duly uploading Form 10E along with the ITR filed on the e-filing site. The total income declared as per revised return of income is Rs.58,59,880/- with tax of Rs.33,765. Relief u/s 89(1) of the Act has been claimed at Rs.15,96,688/-. The assessee has also submitted the computation chart of the compensation as provided by the Company. As per the computation chart, for the financial year 2016-17 relevant to Asst Year 2017-18, the assessee received monthly payment as per the terms of agreement up to the month of November, 2016, a total amount of

Rs.1,60 647/- is shown to be received by him during the year. The chart also gives a year-wise break-up of the computation of the lump sum amount, on the basis of amount payable to the assessee from Financial Year 2016-17 till Financial Year 2034-35, when he attains 63 years of age.

3.9. Verification of Form 10E uploaded by the assessee reveals that the assessee has claimed relief in-Annexure 1 of the Form, which pertains to arrears or advance of salary as per Sub-rule (2) of Rule 21A of the Income Tax Rules, 1962. In Table 'A' of the Annexure, the assessee has spread over the compensation received amount and claimed it to be payable in Asst Years 2017-18 to Asst Years 2035-36 by computing the tax for the future Asst Years on the basis of tax rates of Asst Year 2017-18. The relief so worked out comes to Rs.15,96.688/-, However, the computation of relief u/s 89(1) of the Act in the case of compensation on termination of employment, is as per Sub-rule (4) of Rule 21A of the Income Tax Rules (Annexure III of Form 10E).

3.10. Rule 21A which prescribes the mode of computation of relief u/s 89(1) of the Act states that - 'Where by reason of any portion of an assessee's salary being paid in arrears or in advance or by reason of any portion of family pension received by an assessee being paid in arrears or, by reason of his having received in any one financial year salary for more than 12 months or a payment which under the provisions of clause (3) of Section 17 is a profit in lieu of salary, his income is assessed at rate higher than that at which would otherwise have been assessed, the relief to be granted under sub-section (1) of Section 89 shall be

(a) where any portion of the assessee's salary is received in arrears or in advance or, any portion of family pension is received by an assessee in arrears, in accordance with the provisions of Sub-rule (2);
(c) where the payment is in the nature of compensation received by the assessee, from his employer or former employer at or in connection with the termination of his employment after continuous service for not less than three years and where the unexpired portion of his term of employment is also not less than three years, in accordance with the provisions of sub-rule (4);..."

3.11. The admissibility of assessee's claim of treating the amount paid by the Company as 'salary in advance' or as 'compensation on termination of employment' would determine whether the mode of computation of relief u/s,89(1) falls under sub-rule (2) or sub-rule (4) of Rule 21A.

3.12. In order to determine the nature of payment made to the assessee notice u/s 133(6) of the Act was issued to the Company to provide the following information:-

1. Details of payment made to the assessee in F.Y 2016-17.
2. To confirm nature of payment, whether the payment is advance of salary/compensation on termination of employment.
3. In case, the payments are in the nature of advance of salary, please specify the assessment years to which such payments relate.

3.13. The Company by letter dated 18/12/2019 has given the following reply:-

1. Form 16 for the period 01/04/2016 to 31/03/2017, duly highlighting the details of ex-gratia compensation payment made to each of the above assessee and the details of the amount of Tax

deducted at source (IDS) and its payment to the credit of Government treasury and attached herewith.

2. The nature of payment made to ex-workers:

The company has paid one time lump-sum-ex-gratia amount to its ex-workers, in lieu of payment till completion of his 63 years of his age. Since the above mentioned one time lump sum ex-gratia amount is deemed 'salary' paid to an Ex-employee in advance within the meaning of provisions of the Income tax Act, 1961, accordingly the company has deducted tax at source in accordance with the provisions of section 192 of the income Tax Act, 1961.

3. The payment refers to one time lum-sum ex-gratia amount to its ex-workers, in lieu of payment tit completion of hts 63 years of his age.

3.14. Accordingly, a show cause notice was issued to the assessee on 20/12/2019 asking him to explain why the amount received by him should not be treated as compensation on termination of employments instead of advance of salary as claimed by him.

3.15. The assessment u/s 143(3) was completed on 26/12/2019 assessing total income at Rs. 58,59,880/- as per revised return of income. However, the learned A.O. allowed relief u/s 89 (1) only to the tune of Rs. 2,97,711/- under Rule 21A (1)(c) by treating the same as compensation for termination of service and by spreading over the amount received over a period of last three years.

3.16. The various submissions of the assessee before the lower authorities were summed up by the Id. CIT(A) as under:-

- *The services of the appellant were terminated vide Agreement dated 15.02.2008.*
- *Further order of Labour Commissioner dated 11.01.2008 confirms this factual position.*
- *The appellant was entitled to and received monthly compensation from 2008 to 2016 which was secured by the Government of Maharashtra letter dated 30-09-2008. This was taxable under the head "Salaries" since as per section 15, salary includes salary due from former employer also. This, by no stretch of imagination, means that compensation received in 2017 represents compensation in connection with termination of employment taxable under section 17(3)(i).*
- *Thus during AY 2017-18 there cannot be termination of employment when the appellant has ceased to be employee since 2008.*
- *Hence learned A.O. erred in allowing relief under section 89(1) by spreading advance salary over past three years under sub-rule(4) of Rule 21A of I.T. Rules. Respected Commissioner of Income Tax (Appeals) is requested to treat this payment as advance salary since the same pertains to future years (refer Annexures 5 & 6 above) and allow relief under section 89(1) read with sub-rule (2) of Rule 21A of I.T. Rules.*
- *Kind attention of respected Commissioner of Income Tax Appeals is drawn to following decisions:*
 - a. Sundaram Motors (P) Ltd., vs. Ameerjan & Anr. Reported in 152 ITR 64(SC)*
 - b. Sant Raj and Others vs. O.P. Singla and Others reported in 163 ITR 588 (SC)*
 - c. K.C. Joshi vs. Union Of India and others reported in 163 ITR 597 (SC).*

3.17. We find that the Id. CIT(A) did not heed to the detailed submissions made by the assessee before him and as well as before the Id. AO and simply upheld the order of the Id. AO by holding as under:-

“ However in response to the notice u/s 133(6) sent by the Assessing Officer the Employer company stated the payment refers to one time lum-sum ex-gratia amount to its ex-worker, in lieu of payment till completion of his 63 years of his age.

Vide Clause 4 of the Supplementary Agreement the Employer Company declared that the ex-gratia payment was towards full and final settlement with the ex-employee and no claim of the ex-worker would lie against the company towards any remuneration, compensation, ex-gratia and any other benefits. Hence the contention of the appellant that this payment has to be treated as advance salary since the same pertains to future years and allowed the relief under section 89(1) read with sub-rule (2) of Rule 21A of I.T. Rules is dismissed and restricting the relief u/s 89(1) to Rs 2,97,711/- is upheld.”

4. We find that this issue is no longer res integra in view of the Co-ordinate Bench decision of this Tribunal in the case of Rajesh Shantaram Chavan vs. ACIT in ITA No.1841/Mum/2021 for A.Y.2017-18 dated 22/04/2022. In respect of yet another employee of Century Textile Mills Ltd., on the exactly same set of facts. In fact the Id. DR had made some arguments before us as were made before this Tribunal in the case of Rajesh Shantaram Chavan referred to supra. The operative portion of the order of this Tribunal in ITA No.1841/Mum/2021 dated 22/04/2022 are as under:-

16. Considered the rival submissions and material placed on record, we observed from the record that assessee is one of the employee who did not agree for the voluntary retirement scheme offered by the company and subsequently company has pledged a piece of land for the benefit of 275 employees who are not agreed for the voluntary retirement scheme compensation. Subsequently owing to the order of the Labour Commissioner and Municipal Corporation of the Greater Mumbai which imposed certain conditions on the company to safeguard the interest of the 275 workers who had not opted for voluntary retirement scheme.

17. Subsequently individual employees and the company entered into supplementary agreement and the company agreed to compute the total compensation payable by the company till they attain 63 years of age and accordingly in the case of the assessee it was determined to be at ₹.59,61,483/-. The company after considering that these are one time lumpsum ex-gratia amount payable to the employee and settled the same after deducting the TDS as per the provision u/s. 192 of the Act. We observe from the record that company in the supplementary agreement has explained that the one time lumpsum ex-gratia amount is salary paid to the ex-employee in advance and accordingly, it has deducted tax at source in accordance with the provisions of the I.T. Act.

18. In this regard the company also issued Form 16 to the assessee for the relevant year 2016-17. On careful consideration of the facts on record we observe that even though the textile unit was closed on 2008 and assessee has refused to agree the voluntary retirement scheme offered by the company and under protest assessee and similar employees managed to get compensation through Labour Commissioner and as per the directions of the Labour Commissioner, as agreed by the company, the assessee was awarded the compensation for the remaining period of service till the age of 63 years. The basis of compensation calculated by the company and the company also treated the one-time compensation as a salary paid in advance and deducted the TDS on the same, clearly indicates that the compensation received by the assessee is only salary received in advance not as termination compensation even though this was paid in lumpsum as ex-gratia in one go.

19. As brought to our notice by the counsel for the assessee the case of V.D. Talwar v. CIT (supra) the Hon'ble Supreme Court held as under: -

“Learned counsel for the appellant has then relied on Duff (H. M. Inspector of Taxes) v. Barlow [1942] 10 ITR (Suppl.) 157. That was also a case where the parties agreed that the arrangement arrived at between them should subsist up to 1945 though no exact percentage of the remuneration payable was fixed. The arrangement however was brought to an end prematurely in November 1937 and in consideration of his premature termination some remuneration was paid for services up to November, 1937 and a sum of pound 4,000 was paid as compensation for the loss of the employee's right to future remuneration under the earlier agreement of 1935. In these circumstances it was held that the sum of pound 94,000 was received by the respondent of that case not under the contract of employment nor as remuneration for services rendered or to be rendered but as compensation for giving up a right to remuneration. We are unable to see how that decision is of any help to the appellant in the present case. It seems clear to us that in the present case the appellant has surrendered no rights under the contract; what has been paid to him has been paid under the terms of contract and as salary which he would have earned if twelve months' notice had been given to him. As no notice was given he was treated as though he was in service and entitled to salary for twelve months and that was what was paid to him. It is difficult to see how such payment can be treated as compensation for loss of office. The present case is similar to the two cases of Henry v. Arthur Foster and Henry v. Joseph Foster [1932] 16 Tax Cas. 605 and Henry's Case (supra) and different from the case of Hunter v. Dewhurst (supra). In the first two cases the respondents were directors of a limited company. They had no written contracts of services with the company but Article 109 of the company's articles provided that in the event of any director who held office for not less than five years, dying or resigning or ceasing to hold office for any cause other than misconduct, bankruptcy, lunacy or incompetence, the company should pay to him or his representatives by way of compensation for loss of office a sum equal to the total remuneration received by him in the preceding five years. The respondents resigned office as director in these two cases and received from the company as "compensation" a payment calculated in accordance with Article 109. It was held by the Court of Appeal that the payment constituted a profit of the office of Director and was properly assessable to income-tax. Lord Hanworth, M. R. said at page 629 "Now it is argued that those sums which became payable under the terms recorded in article 109 were compensation for the loss of office. Is that the

substance of the matter? When a man has died he is not compensated for the loss of his life if he resigns voluntarily', why should he be paid compensation for the loss of his office? It would seem as if those words were put in in view of the possibility thereunder of escaping the charge to tax ; but, as I have said, we, have got to look at the substance of the matter, and the substance of this payment is this : It is contemplated as a part of the remuneration of the Director payable to him, and estimated according to his service during a certain time, and in addition to the amount paid to him under clause 104, there shall be estimated a sum which is to fall to be paid to him under clause 109." Lawrence L. J. said at page 632 : "In my judgment, the determining factor in the present case is that the payment to the Respondent whatever the parties may have chosen to call it was a payment which the company had contracted to make to him as part of his remuneration for his services as a director. It is true that payment of this part of his remuneration was deferred until his death or retirement or cesser of office, and that in the articles it is called "compensation for loss of office." It is, however, a sum agreed to be paid in consideration of the Respondent accepting and serving in the office of Director, and consequently is a sum paid byway of remuneration for his services as Director." It seems to us that the same principle should apply in the present case. What has been paid to the appellant is his salary in lieu of notice. If that is the true position then the amount paid is taxable under s.7 of the Indian Income- tax Act, 1922. It is not compensation for loss of employment within the meaning of Explanation 2 thereto."

20. Respectfully following the above said decision and the ratio laid down by the Hon'ble Supreme Court in the above case, we are inclined to treat the compensation received by the assessee as only salary received in advance. Therefore, we direct the Assessing Officer to allow the claim of the assessee u/s. 89 r.w. Rule 21A of I.T. Rules. Accordingly, the appeal filed by the assessee is allowed.

4.1. Respectfully following the same, the grounds raised by the assessee are allowed.

5. In the result, appeal of the assessee is allowed.

Order pronounced on 19/ 05 /2022 by way of proper mentioning in the notice board.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 19/ 05 /2022
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai