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IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'A' PUNE

BEFORE HON'BLE SHRI S. S. GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 1388/PUN/2023

निर्धारण वर्ष / Assessment Year : 2018-19

Adinath Vasantrao Wandhekar,
At Post-Shevgaon, Davakinadan Khandoba Ngr.,
Ahmednagar-414502
PAN: AAEPW7481P ..... ***अपीलार्थी / Appellant***

बनाम / V/s

Income Tax Officer,
Ward-4, Panvel, Mumbai ..... ***प्रत्यर्थी / Respondent***

द्वारा / Appearances

Assessee by : Mr Prasad Bhandari ['Ld. AR']
Revenue by : Mr Ramnath Murkunde [Ld. DR']
सुनवाई की तारीख / Date of conclusive Hearing : 29/02/2024
घोषणा की तारीख / Date of Pronouncement : 08/03/2024

ORDER

PER G. D. PADMAHSHALI, AM;

This appeal of the assessee is filed against DIN & order No. ITBA/NFAC/S/250/2023-24/1058302774(1) dt. 29/11/2023 passed u/s 250 of the Income-tax Act, 1961 [in short 'the Act'] by National Faceless Appeal Centre, Delhi [in short 'NFAC'],

2. Succinctly stated facts of present case are that;

2.1 The assessee an individual and was an employee of Maharashtra State Electricity Distribution Company Ltd [in short 'MSEDCL'], a State Government

of Maharashtra [in short 'GoM'] owned company, wherefrom the assessee retired and was in receipt of gratuity of ₹1581460/- & leave encashment of ₹859730/- as his retirement benefit in the year under consideration.

2.2 The assessee in his return of income [in short 'ITR'] had claimed above amount of Gratuity u/s 10(10)(i) and Leave Encashment receipts u/s 10(10AA)(ii) of the Act as fully exempt from taxes.

2.3 While framing scrutiny assessment u/s 143(3) of the Act vide order dt. 25/03/2021, the Ld. AO bringing the fact on record that MSCDL is a public sector undertaking and not a government, hence restricted the claim of exemption of Gratuity to ₹10,00,000/- u/c (ii) of section 10(10) and Leave Encashment to ₹3,00,000/- u/c (ii) of section 10(10AA) of the Act. As result application of ceiling, the excess of exemption claimed were disallowed and assessed to tax in the hands of the assessee by treating said excessive claims as misreporting of income. The assessee did not challenge the disallowances and consequential additions further in appeal.

2.4 Owning to aforestated additions in the scrutiny assessment, the Ld. AO initiated penal proceedings for misreporting of income u/s 270A of the Act and after considering the submission of the assessee, by a DIN & order ITBA/PNL/F/270A/2021-22/1041650935(1) dt. 26/03/2022 culminated the proceedings by imposing a penalty of ₹6,02,858/- @ an accelerated rate of 200% of tax sought to evaded u/s 270A(8) of the Act.

2.5 The first appeal against the aforestated imposition of penalty did fail to settle dispute in favour of the assessee. For the reasons the assessee set-up the present appeal before Tribunal on the solitary ground that the levy of penalty is devoid of facts & merits of the case and without considering the bonafied mistake.

3. Both parties have laid their rival contentions and after hearing them at a length, we have perused case records in the light of rule 18 of ITAT, Rules 1963 and considered the facts in the light settled legal position.

4. We observed that, the appellant assessee was in service previously with Maharashtra Electricity Board [in short 'MSEB'] which was constituted in 1960 & operating under the direct control of GoM. Owning to reforms by virtue of amendment brought in Electricity Act, 2003 the erstwhile MSEB demerged its three principal activities i.e. generation, transmission and distribution through restructuring and assigned it to three newly formed companies for the stated purpose. The appellant's employer MSEDCL is one of such company engaged in distribution of electricity, from which the appellant assessee received afforested gratuity & leave encashment as his retirement entitlement/benefits in terms of MSEDCL employee service regulation, 2005.

5. Undisputedly, the appellant joined his services with MSEB as GoM employee, however owning to its restructuring his employer became State owned PSU company i.e. MSEDCL from which the appellant ultimately retired. In stricter sense, the appellant rendered part of his service tenure as State Government employee and balance part of it was as an employee of PSU. This

led to his bonafied belief in claiming full exemption of retirement benefit in the ITR filed by him. The Ld. AO however stand corrected the claim of the assessee by restricting the exemption to the maximum ceiling as available to non-government employee, and is very well accepted by the appellant by discharge of determined taxes. In view of the acceptance of addition made on account of disallowance of full claim of exemption, the tax authorities levied penalty u/s 270A @ the accelerated rate of 200% of tax sought to be evaded by mis-reporting the nature of employment held *vis-à-vis* excess claims made in the ITR filed.

6. Though we are not dealing with the correctness of disallowance whereby the exemption claims were restricted to the extent of maximum ceiling fixed in relation to non-government employees, but it would not be out of the box to state that, insofar as the gratuity is concerned, undisputedly it was accrued to the appellant evenly throughout his service tenure. Therefore the portion of gratuity which is accrued to him from the year of joining his services with MSEB upto the year of transfer of his service to MSEDCL was entitled to full exemption being Government Service. The balance gratuity thus represents accrued from MSEDCL being non-governmental service which alone can only be subjected to ceiling limit prescribed u/s 10(10)(ii) of the Act. Applying this ratio in relation to Leave Encashment, the receipt attributable to any leave accumulated and standing to appellant's credit as on the date he became an employee of state PSU i.e. MSEDCL must qualify for full exemption u/c (i) of section 10(10AA) and balance receipt should have only been subjected to ceiling limit of ₹3Lakhs since such encashment was attributable to service rendered to MSEDCL. However the

tax authorities have perfunctory pressed into service the ceiling without first analysing the facts holistically while dealing with assessment. In the penalty proceedings there were indifferent in dealing with the matter, which led the institution of this appeal before us.

7. Having holistically considered the facts and circumstance of the case, levy of penalty in this case in our considered view was not warranted for the reasons that; (i) admittedly for part of the service the appellant was State Government employee whose employment by enforcement of electricity Act, 2003 and MSEDCL employee Service Regulation 2005 was converted into non-governmental service/employment. Therefore, the belief under which full exemption of retirement benefit claimed in the ITR filed was in first not incorrect in its entirety and certainly it was bonafied and not synthetic one (ii) secondly, the explanation offered by the appellant in support of his mistaken but bonafied belief and disclosed all material facts of his service & the circumstance which swayed to claim full exemption in his ITR in our considered view squarely falls within clause (a) of s/s (6) of section 270A of the Act, therefore pardonable (iii) and finally, the imposition of penalty is at the discretion of Ld. AO, since s/s (1) of section 270A of the Act, refers to the word 'may' and not as ‘shall’. However, the tax authorities below in our considered view were failed to appreciate the facts and circumstance of the present case holistically and further in right spirit of law, but dealt therewith without application of mind and perfunctory imposed / confirmed the penalty @ accelerated rate of 200% u/s 270A of the Act in unwarranted case like this.

8. Before parting, it is apt to note here that, the possibility of presence of doubt in the mind of Ld. AO while deciding the ceiling of exemption as to whether status of employment as at the time of joining or at the time of retirement is to be considered, cannot be completely ruled out. However, the Ld. AO disallowed the excess claim of exemption which stands fortified by the Hon'ble Apex Court in *'CCE Vs Calcutta Springs'* [2008] 229 ELT 161(SC) which has been followed subsequently in landmark judgement *'CoC Vs Dilip Kumar & Co'* reported in [2018] 9 SCC 1 (SC) wherein their Hon'ble lordship have held that, *'in case of benefit of doubt or ambiguity in taxing the income, the benefit of doubt goes to State'*. However, in respect of penalty in fiscal laws the principle followed is more like the principle in criminal cases. That is to say the benefit of doubt is more easily given to the assessee, and this finds expounded in *'V V Iyer Vs CC'* [1999] 110 ELT 414 (SC). In view of this, we set-aside the impugned order of Ld. NFAC and quashed the order of penalty.

9. In result, the appeal of the assessee stands ALLOWED.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Friday 08th day of March, 2024.

-S/d-	-S/d-
S. S. GODARA,	**G. D. PADMAHSHALI**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / PUNE ; दिनांक / Dated : 08th Day of March, 2024.

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1.अपीलार्थी / The Appellant. 2. प्रत्यर्थी / The Respondent. 3. The Pr. CIT -1, Nashik
4. The CIT(A)-NFAC, Delhi (India) 5. DR, ITAT, Bench 'A', Pune 6. गार्डफ़ाइल / Guard File.
Ashwini

आदेशानुसार / By Order
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.