

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: DR. BRR Kumar, Vice President
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 823/Ahd/2024
Asst. Year. 2018-19**

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| Rakesh Saxena C/o J N Goyal & Company, C-162, Ranjeet Nagar, Bharatpur Rajasthan-321001 PAN: BGOPS2563P (Appellant) | Vs | The PCIT, Vadodara-1, Vadodara (Respondent) |
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Assessee Represented: None
Revenue Represented: Shri A.P. Singh, CIT-DR

Date of hearing : 09-12-2024
Date of pronouncement : 11-12-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the Revision order dated 22.02.2024 passed by the Principal Commissioner of Income Tax, Vadodara-1 arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2018-19.

2. Brief facts of the case is that the assessee was employed in M/s. GE Power India Ltd. and on opting of Voluntary Retirement Scheme (VRS) received a sum of Rs.34,67,866/- as per Form No. 16. Whereas in the Return of Income, the gross salary was mentioned as Rs.7,04,116/-. Assessment was completed by disallowing claim of exemption u/s. 10(10CC) of Rs.4,50,000/- and interest income of Rs.5,329/- and determined the total income as Rs.10,64,798/-.

3. On perusal of the assessment order, the Ld. PCIT found that the assessee claimed Annuity payment of Rs. 15,00,000/- was made to LIC as not taxable, which is contrary facts on record and against the provisions of law. Therefore a show cause notice issued why not to deny the claim of exemption made by the assessee.

3.1. In response, the assessee filed a reply which was considered by Ld. PCIT and set-aside the assessment by observing as follows:

“6.5. Thus, the A.O. has allowed exemption on Rs. 15 lakhs on incorrect assumption of facts and contrary to provisions of law wherein the VRS amount is taxable as salary income and exemption is restricted to Rs. 5 lakhs u/s 10(10C) of the Act.. Further, during the course of proceedings u/s 263 of the Income-tax Act, 1961 in case of employees of GE Power, the necessary clarifications have been obtained from employer M/s. GE Power Ltd. in respect of employees to whom VRS benefits were paid. The reply is self-explanatory and reproduced as under.

"Query-1.....

Query 2: Vide para 3.1. Kindly clarify:

Whether the LIC Annuity Policy payment and income-tax liability are both taken as perquisite in form No.16 of these employees for tax purpose. Whether the income-tax liability in respect of LIC Annuity Policy payment has been treated as exempt u/s 10(10CC) of Income Tax Act, 1961 in the form No. 16. If so, whether disallowance u/s 40(a)(v) of the Income-tax Act, 1961 has been made by you in your return of income in respect of Income-tax

liability of these employees relating to LIC Annuity Policy payment borne by you as an employer.

Response: In this regard, please our response as follows:

No, the LIC Annuity Policy payment and income-tax liability are not taken as perquisite in form No. 16 of these employees. Also, neither the Income-tax liability in respect of such LIC Annuity Policy payment has been treated as exempt u/s 10(10CC) of the Income Tax Act, 1961 in form 16. Nor any disallowance u/s 40(a)(v) of the Income-tax Act, 1961 has been made in our return of income. The said LIC Annuity amount was paid to LIC on the request of these employees and hence such income paid under Voluntary Retirement Scheme (VRS) is taxable in the hands of these employees. Further the company has also provided an exemption of Rs.5,00,000/- against VRS u/s 10(10C) of the Income-tax Act, 1961. The copies of LIC Annuity authorization letter along with LIC annuity letter on sample basis as proof are enclosed as Annexure-3."

6.6. Thus, A.O. ignored that the entire VRS amount had been taxed as salary u/s 17(1) of the Act, and that out of this VRS amount at the request of employees the employer had purchased LIC Annuity. Thus, LIC annuity was purchased by employer at the request of employees and therefore constituted an application of the said income and no part of VRS amount was treated as perquisite u/s 17(2) of the Act in the hands of employees in the Form 16.

6.7 In light of the above, it is clear that A.O. has passed an assessment order that is both erroneous and prejudicial to the interest of revenue as relief of Rs. 15,00,000/- has been allowed, in respect of VRS amount which is rightly shown as part of taxable salary in Form 16 and the employer has paid only Rs. 534/- as perquisite u/s 17(2) of the Income-tax Act, 1961 to the assessee contrary to claim of the assessee. Thus, A.O. has failed to consider the material on record and disallow the exemption of Rs. 15,00,000/- as per provisions of the Act and levy the tax exigible on the same, thereby rendering the order both erroneous and prejudicial to the interest of revenue within the meaning of section 263 of the Act."

4. Aggrieved against the Revision order, assessee is in appeal before us raising the following Grounds of Appeal:

1. The Ld. Pr.CIT seriously erred in law as well as on the facts of the case in invoking the provisions of Sec. 263 of the Act and therefore, the impugned order dated 22.02.2024 u/s. 263 of the Act kindly be quashed.
- 2 The ld. Pr. CIT seriously erred in law as well as on the facts of the case in assuming jurisdiction u/s 263 of the Act by wrongly and incorrectly holding that this renders the order erroneous in so far as prejudicial to the interest of revenue as exemptions have wrongly been allowed in respect of salary income contrary to provisions of income tax law and without conducting any inquiry in the matter.
- 3 The ld. Pr. CIT erred in law as well as on the facts of the case in wrongly setting aside the assessment order dated 20.04.2021 despite there being complete application of mind by the AO on the subjected issues and it was nothing but a case of change of opinion, based on which, assumption of jurisdiction u/s 263 is not permissible. The impugned order dt. 22.02.2024 therefore, lacks valid jurisdiction u/s 263 of the Act and hence, the same kindly be quashed.
- 4 The ld. Pr. CIT erred in law as well as on the facts of the case in wrongly setting aside the assessment order dated 20.04.2021 relying on the various judgements that are not subject matter of assessment.
5. Today is the 8th time of hearing of this appeal, none appeared on behalf of the assessee. Though Mr. Rajiv Goyal, Advocate filed Vakalat on behalf of the assessee and sought adjournment on the first time of hearing of this appeal namely on 23-07-2024 that one month time be given to file necessary materials and argue the case on merits. Thus the appeal was adjourned to 27-08-2024. It is thereafter no Representation from the assessee in spite of service of notices. This clearly shows that the assessee is not interested in pursuing the appeal further.
6. Per contra, Ld. CIT-DR Shri A.P. Singh appearing for the Revenue submitted that identical issue in case of the other employees M/s. GE Power India Ltd. wherein Revision proceedings initiated by the Ld. PCIT were upheld by the Co-ordinate Bench of this Tribunal in the case of Mafatbhai Bhikhabhai Parmar Vs. PCIT

and Ors. in ITA No. 463/Ahd/2023 and Ors. vide order dated 27-05-2024. Respectfully following the same, the present appeal filed by the assessee is liable to be dismissed.

7. We have given our thoughtful consideration and perused the materials available on record and the order passed by the Coordinate Bench of this Tribunal in the case of Mafatbhai Bhikhabhai Parmar Vs. PCIT and Ors. wherein it was held as follows:

“9. The explanation of the assessee was that the sum of Rs.15 lac was paid to the LIC by the employer and not by the assessee. The assessee had submitted that a group policy was taken by the employer and the premium amount was also paid by the employer and that the assessee had no nexus with this payment. Further that this amount was wrongly shown by the employer as salary of the assessee in Form-16. It was contended that the contribution made by the employer to provide pensionary or deferred annuity benefit to its employees cannot be taxed in the hands of the employee u/s 17 of the Act. However, the assessee had not produced any confirmatory evidence from the employer and stated that due to Covid-19 Pandemic, he was not allowed access to the office of the employer company. A similar explanation was given in respect of non-monetary perquisite of Rs.4.5 lakh claimed exempt u/s 10(10CC) of the Act. The A.O. accepted the submissions of the assessee on its face value and did not examine as to why the payment of Rs. 15 lac paid to LIC as well as the amount of exemptions claimed u/s 10(10B) and u/s 10(10CC) of the Act were shown as part of gross salary in Form No. 16 issued by the employer. No follow up inquiry was made by the A.O. with the employer to find out whether the payment of Rs. 15 lac to LIC was made by the employer or whether this payment was on behalf of the employee. When the assessee had failed to furnish any confirmatory evidence from the employer the AO should have made direct enquiry from the employer to find out of reason for the difference between salary as per Form No. 16 and the salary as disclosed in the ITR. Such enquiry was mandatorily required when the assessee had contended that the employer had wrongly shown the salary in Form-16. It is thus evident from these facts that the AO did not make the enquiries and verifications which was required to be made before allowing the claim of the assessee and, therefore, the order of the AO was erroneous. In the absence of any follow up inquiry by the A.O., the

contention of the assessee that the A.O. has applied his mind and taken one of the plausible views, cannot be accepted.

10. In the course of proceeding u/s 263 of the Act, Ld. PCIT had made inquiry from the employer M/s. GE Power India Ltd. in order to confirm the nature of payments made to the assessee. The relevant query made by the ld. PCIT and the reply of the employer as reproduced in the impugned order is found to be as under:

Query 2: Vide para 3.1. Kindly clarify:

- Whether the LIC Annuity Policy payment and income-tax liability are both taken as perquisite in form No. 16 of these employees for tax purpose.
- Whether the income-tax liability in respect of LIC Annuity Policy payment has been treated as exempt u/s 10(10CC) of Income Tax Act, 1961 in the form No. 16. If so, whether disallowance u/s 40(a)(v) of the Income-tax Act, 1961 has been made by you in your return of income in respect of Income-tax liability of these employees relating to LIC Annuity Policy payment borne by you as an employer.

Response: In this regard, please our response as follows:

No, the LIC Annuity Policy payment and income-tax liability are not taken as perquisite in form No. 16 of these employees. Also, neither the Income- tax liability in respect of such LIC Annuity Policy payment has been treated as exempt u/s 10(10CC) of the Income Tax Act, 1961 in form 16. Nor any disallowance u/s 40(a)(v) of the Income-tax Act, 1961 has been made in our return of income.

The said LIC Annuity amount was paid to LIC on the request of these employees and hence such income paid under Voluntary Retirement Scheme (VRS) is taxable in the hands of these employees. Further the company has also provided an exemption of Rs. 5,00,000/- against VRS u/s 10(10CC) of the Income-tax Act, 1961. The copies of LIC Annuity authorization letter alongwith LIC annuity letter on sample basis as proof are enclosed as Annexure-3.

11. The provision of section 263 of the Act stipulates that the PCIT can make or cause enquiry before passing the order. The Ld. PCIT had exercised this power to make enquiry from the employer. It is crystal clear from the reply of the employer that the annuity amount paid to LIC was not made by the employer rather this payment was made on the request of the employees out of the VRS amount and was part of their taxable income. Therefore, this was shown as part of salary in Form No. 16. It also revealed from the enquiry made by the Ld. PCIT that the exemption of Rs.4,50,000/- claimed u/s 10(10CC) of the Act and of Rs.4,51,900/- u/s 10(10B) of the Act was not correct and not in accordance with the provisions of law. The deduction u/s 10(10CC) of the Act is available in respect of tax paid by employer for a non-monetary perquisite derived u/s 17(2) of the Act. The employer can't claim any deduction for such perquisite and the same is liable to be disallowed u/s 40(a)(v) of the Act. The AO didn't make any enquiry from the employer about payment of perquisite of Rs.4,50,000/- which was claimed exempt u/s 10(10CC) of the Act and had allowed the claim of the assessee. The enquiry made by the PCIT from the employer revealed that neither any perquisite was paid to the assessee nor the employer had made any disallowance u/s 40(a)(v) of the Act. Therefore, the claim of exemption u/s 10(10CC) of the Act made by the assessee was wrong and incorrect. Similarly, the claim for exemption u/s 10(10BB) of the Act was also allowed by the AO without making any enquiry from the employer.

12. It is thus evident from the above facts, that the AO had not conducted proper inquiries in respect of the claims as made in the return of income and, therefore, the order was rightly treated as erroneous and pre-judicial to the interest of revenue by the Ld. PCIT. As pointed out by the Ld. CIT-DR, it was held by the Hon'ble Supreme Court in the case of Navnit Lal Sakar Lal (supra) that the amount utilized by the employer for obtaining deferred annuity policy would form part of remuneration payable to the assessee and was chargeable under the head "salaries". Therefore, the annuity amount of Rs. 15 lakh paid to LIC by the employer was remuneration of the assessee and taxable as salary. As the order of the AO was not in accordance with the decision of the Apex Court the order of the AO was erroneous and pre-judicial to the interest of revenue for this reason as well.

13. The decisions relied upon by the Ld. AR are all found different on facts and not applicable to the peculiar facts of this case. It is a trite law and a well settled position that non application of mind or wrong assumption of facts or incorrect application of law by the A.O. will make the order

erroneous and pre-judicial to the interest of Revenue. Therefore, we do not find anything wrong with the assumption of jurisdiction u/s 263 of the Act by the Ld. PCIT as the order of the AO was erroneous and pre-judicial to the interest of Revenue for the reasons as already discussed above. We, therefore, upheld the order of the Ld. PCIT. The grounds of appeals taken by the assessee are dismissed.

14. In the result, the appeal filed by the assessee is dismissed.”

8. Since there is no change in facts of the present case, we have no hesitation in following the Co-ordinate Bench decision in dismissing the appeal filed by the assessee.

9. In the result, **the appeal filed by the Assessee is hereby dismissed.**

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| Order pronounced in the open court on 11 -12-2024 |
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Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT

Ahmedabad : Dated 11/12/2024

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.

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Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद