

IN THE INCOME TAX APPELLATE TRIBUNAL “A”, BENCH KOLKATA

BEFORE SHRI A.T. VARKEY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.2370/Kol/2017

(निर्धारणवर्ष / Assessment Year: 2011-12)

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| Sudip Rungta | Vs. | DCIT, Circle-49, Kolkata |
| Ps Magnum, Block-5, Flat 5C, VIP Road, Kaikhali, Kolkata-700052 | | |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No. :ADDPR 2818 R | | |
| (Appellant) | .. | (Respondent) |

Appellant by : Shri Dilip S.Damle, FCA

Respondent by : Shri Supriyo Pal, JCIT Sr. DR

सुनवाईकीतारीख/ **Date of Hearing** : **22/10/2019**

घोषणाकीतारीख/**Date of Pronouncement** : **10/01/2020**

आदेश / O R D E R

Per Dr. A. L. Saini, AM:

The captioned appeal filed by the assessee, pertaining to assessment year 2011-12, is directed against the order passed by the Commissioner of Income Tax (Appeal)-19, Kolkata, in appeal no. 66/CIT(A)-19/C-63/2014-15, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the ‘Act’) dated 17/03/2014.

2. The grounds of appeal raised by the assessee are as follows:

1. For that on the facts and in the circumstances of the case, the CIT(A) was unjustified in law and on facts in upholding the order passed by the AO in which benefit of exemption u/s 10(13A) of the Act was erroneously denied.

2. For that on the facts and in the circumstances of the case, the authorities below were unjustified in law in treating the performance bonus received by the appellant to be part of the salary for the purpose of determining qualifying amount in arriving at the exemption allowable u/s 10(13 A) of the Income Tax Act.

3. For that on the facts and in the circumstances of the case, the authorities below ought to have held that for the purpose of computing qualifying amount u/s 10(13A) of the Act the amount received by the appellant as performance bonus did not partake character of the salary.

4. For that on the facts and in the circumstances of the case, the AO be directed to compute and allow the exemption u/s 10(13A) in respect of HRA received treating the performance bonus received being not salary.

5. For that the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before.

3. Brief facts qua the issue are that during the assessment proceedings, the assessee has submitted Form 16 before Assessing Officer wherefrom Assessing Officer noticed that assessee has claimed exemption u/s 10(13A) for House Rent Allowance of Rs. 8,47,742/-. The details were asked regarding the rent paid and the calculation of the exemption u/s 10(13A) of the Act. In response, the assessee

has stated that the total rent paid during the year was Rs. 8,20,000/- only. As per Form 16 assessee's basic salary was Rs. 30,00,000/-. The assessee in reply to query asked by Assessing Officer, has submitted written explanations before Assessing Officer that for the purpose of calculations of exemption u/s 10(13A), salary will include only 'basic salary' and nothing else and hence, rent paid over 10% of the basic salary that is Rs. 8,20,000/- minus Rs. 3,00,000/- (being 10% of Rs. 30,00,000) has to be allowed. However, Assessing Officer noted that as per income tax rule read section 10(13A) which clearly stipulates that any commission or bonus linked to the turnover or the performance has to be treated as salary and hence, 'performance bonus' definitely is covered under the term 'salary' as per the meaning assigned to the definition of 'salary' for the purpose of calculating exemption u/s 10(13A). 'Performance bonus' cannot be comprehended as an allowance or perquisite as defined in Rule 2(h) of the Fourth Schedule to be excluded from the purview of 'salary'. Thus, the assessee's total salary for computations for exemptions u/s 10(13A) for the year under assessment comes to Rs. 30,00,000/- plus Rs. 150,00,000/- which is Rs. 180,00,000/- - 10% of which comes to Rs. 18,00,000/-. Since the assessee has paid rent of Rs. 8,20,000/- which is much less than this amount of Rs. 18,00,000/- the assessee is not entitled to any benefit u/s 10(13A) of the Act. Thus, Assessing Officer denied the benefit u/s 10(13A) of the Act.

4. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the order passed by the Assessing Officer.

5. Aggrieved the assessee is in appeal before us.

6. The Id. Counsel for the assessee relied on the submissions made before the authorities below and on the other hand, the Id. DR has primarily reiterated the

stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity.

7. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials available on record. We note that in this case the only ground of appeal relates to the issue of disallowances of Rs. 8,47,742/- claimed u/s 10(13A) of the Act. The Assessing Officer disallowed the aforesaid claim on the ground that the performance bonus is nothing but part of salary. The Assessing Officer found that the assessee had claimed of Rs. 1.50 lakh as performance bonus. The Assessing Officer added aforesaid amount on the ground that any commission or bonus linked to the turnover or the performance has to be treated as salary and hence, performance bonus definitely is covered under the term salary as per the meaning assigned to the definition of salary for the purpose of calculating exemption u/s 10(13A). Performance bonus cannot be comprehended as a perquisite as defined in Rule 2(h) of the Fourth Schedule which could be excluded the purview of salary. Thus, the assessee's total salary for computations for exemptions u/s 10(13A) for the year under assessment was worked as (Rs. 30,00,000/- plus Rs. 150,00,000/-) Rs. 180,00,000/- and 10% of which comes to Rs. 18,00,000/-. As the appellant paid rent of Rs. 8,20,000/- which is much less than amount of Rs. 18,00,000/- hence appellant claim of 10(13A) as denied by the Assessing Officer.

8. On the contrary, the appellant submitted before Assessing Officer that Rs. 150,00,000/- was paid during the financial year as the performance bonus which could not to be considered as part of salary within the meaning of 4th Schedule of I. T. Act. The appellant also relied over the decision of the Kerala High Court in the case of CIT vs. B. Ghoshal 125 ITR 744 wherein it is held that the bonus

received by the assessee did not partake character of salary. We note that the dispute in the assessee's case under consideration is only on the "meaning of salary". The assessee is a salaried individual. He had filed the return of income for A.Y. 2009-10 declaring total income of Rs. 2,61,97,296/-. In course of assessment the assessee had filed Form 16 in support of the salary offered to tax in the return of income. The AO required the assessee to explain the manner in which the exemption u/s 10(13A) of Rs.8,47,742/- in respect of house rent allowance was calculated. In response the assessee filed detailed working along with explanations. The assessee explained that term 'salary' for the purposes of Section 10(13A) includes only 'basic salary' and 'dearness allowance' and nothing more. The AO however in his impugned order held that the 'performance bonus' received by the assessee also formed part of 'salary' for the purposes of Section 10(13A) and accordingly re-computed the exemption available u/s 10(13A) thereby resulting in disallowance of the entire exemption claim of Rs. 8,47,742/-. The Id. Counsel submits that the findings of the AO are contrary to the extant provisions contained in Rule 2A of the I.T. Rules, 1962. Clause (h) of Rule 2A specifically provides that 'salary' includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites. Accordingly, the performance bonus received by the appellant did not form part of 'salary' for the purposes of computing exemption u/s 10(13A) of the Act. We note that the decision of the Hon'ble Kerala High Court in the case of **CIT Vs B.Ghosal (125 ITR 444)** is on identical facts wherein on exact same set of facts the Court had held that 'performance bonus' does not form part of 'salary' as defined in clause (h) of Rule 2A for the purposes of Section 10(13A) of the Income tax Act, 1961. Considering the facts narrated above, we note that total rent paid by the assessee during the year is to the tune of Rs. 8,20,000/-. The basic salary for the purpose of computation of house rent disallowance is Rs. 3,00,000/- (10% of Rs. 30,00,000/- being basic salary). Therefore, excess of rent paid over 10% of salary comes at Rs. 5,20,000/- (Rs. 8,20,000/- - Rs. 3,00,000/-). Therefore, assessee is entitled for house rent allowance at Rs. 5,20,000/- u/s

10(13A) of the Act. Assessing Officer is directed to allow the exemption of HRA at Rs. 5,20,000/-.

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

Order pronounced in the Court on 10.01.2020

Sd/-
(A.T. VARKEY)
न्यायिकसदस्य / JUDICIAL MEMBER

दिनांक/ Date: 10/01/2020

(SB, Sr.PS)

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

Copy of the order forwarded to:

1. Sudip Rungta
2. DCIT, Circle-49, Kolkata
3. C.I.T(A)-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

4. C.I.T.- Kolkata.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches