

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI N.V VASUDEVAN, VICE PRESIDNET AND
SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.1100/Bang/2019

Assessment year : 2011-12

The Dy. Commissioner of Income-tax, Circle-1(1)(1), Bengaluru.	Vs.	Smt. Viloo Zareer Morawala Patel, C/o M/s Avesthagen Ltd., Room No.215, 2 nd Floor, BMTC Building, 80 feet Road, 6 th Block Koramangala, Bengaluru. PAN – ABVPP 2706 J
APPELLANT		RESPONDENT

Appellant by	:	Shri Praveen Karanth, Addl. CIT (DR)
Respondent by	:	Smt. Kavitha N Moorthy, Com. Secretary

Date of hearing	:	30.01.2020
Date of Pronouncement	:	04.02.2020

ORDER

Per B.R Baskaran, Accountant Member

The appeal filed by the Revenue is directed against the order dated 27-02-2019 passed by the 1d CIT(A)-1, Bengaluru and it relates to asst. year 2011-12.

2. The Revenue is aggrieved by the decision of 1d CIT(A) in holding that the salary income is assessable at Rs.2.10 crore only as against the amount of Rs.4.38 crore assessed by the AO.

3. We heard the parties and perused the record. The assessee is an individual deriving income from salary and other sources. She is the Managing Director of the M/s Avesthagen Ltd and the salary income was received from the above said company. She declared salary income of Rs.1,56,96,707/-. The AO noticed from the notes given in Schedule II to Notes of accounts attached in the Annual Report that the above said company has paid remuneration in excess of the limit prescribed under Schedule XIII of the Companies Act up to 31.3.2010 without obtaining approval of the Central Government. The amount paid upto 31.3.2010 was stated as Rs.4,38,98,113/-. It was also further mentioned that the excess amount has not been approved by the Central Government. Based on the above said Notes on Accounts, the AO took the view that the salary due to the assessee was Rs.4,38,98,113/-. Accordingly he added the difference amount of Rs.2,82,74,023/- in the hands of the assessee.

4. The Id CIT(A) noticed that the gross amount of the salary received by the assessee was Rs.2,10,00,004/- and net amount of salary received was Rs.1,56,96,707/-. He further noticed that the gross amount of salary of Rs.2,10,00,004/- is matching with the amount shown in Form No.26AS field by the company. Before the Id CIT(A) the assessee submitted that the excess remuneration though approved to by the company, yet the same was not paid to her as necessary approval from the Central Govt. was not available. It was also submitted that the assessee, being individual, is following cash method of accounting for declaring salary income and hence the AO can tax only the amount of Rs.2,10,00,004/- on

receipt basis. The Id CIT(A) was convinced to the submissions of the assessee. Accordingly he directed the AO to adopt the salary income of the assessee at Rs.2,10,00,004/-. The Revenue is aggrieved by the decision rendered by Id CIT(A).

5. We heard the parties and perused the record. Section 15 of the Act governs the taxability of income from salary and the same read as under:-

“Section 15 of Income Tax Act "Salaries"”

The following income shall be chargeable to income-tax under the head "Salaries"-

(a) any salary due from an employer or a former employer to an assessee in the previous year, whether paid or not;

(b) any salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer though not due or before it became due to him;

(c) any arrears of salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer, if not charged to income-tax for any earlier previous year.

Explanation 1.-For the removal of doubts, it is hereby declared that where any salary paid in advance is included in the total income of any person for any previous year it shall not be included again in the total income of the person when the salary becomes due.

Explanation 2.-Any salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from the firm shall not be regarded as "salary" for the purposes of this section.

On a perusal of clause (a) of above said provision, it can be noticed that *any salary due from a employer or former employer* to an assessee is taxable whether the same is paid or not, meaning thereby, the salary income is assessable on accrual basis. Clauses (b) and (c) carve out exception to clause (a). Hence the claim of the assessee that salary income is offered to tax on receipt basis is not sustainable.

6. However, what can be taxed is “what is due to the assessee”. It is the submission of the assessee that the company has shown the salary income in its books of accounts at Rs.2,10,00,004/- only and the same was reflected in Form No.26AS filed by the company. It is the submission of the assessee that though higher amount of salary was approved by the company, yet the same was not paid to the assessee as the necessary approval from Central Government was not received. Thus, according to the assessee, what has accrued to the assessee was the amount which was paid to her by the company. It was also submitted that Form No.26AS also mentions the amount of Rs.2,10,00,004/- only. It means that the company itself should have claimed expenditure towards salary paid to the assessee at Rs.2,10,00,004/-.

7. Since the assessee is a Managing Director of the company M/s Avesthagen Ltd., payment of salary to her is governed by the provision of companies Act. It is the submission of the assessee that the higher salary proposed by the above said company was not approved by the Central Government. It is the submission that

only a sum of Rs.2,10,00,004/- was paid as salary during the year under consideration.

8. It is submitted that Form No.26AS mentions the salary figure as Rs.2,10,00,004/-. Hence it is quite possible that the company has claimed the salary expenditure paid to the assessee at Rs.2,10,00,004/- only. There should not be any dispute that the salary is payable as per the contract reached between the company and assessee. Merely because a higher amount was paid in the earlier years does not lead to the presumption that the same amount should have been paid in the succeeding year also. There is a possibility of reduction in salary in the succeeding year. What is paid as salary to the assessee would have been claimed as expenditure by the company. Accordingly, in our view, if the company has claimed salary of Rs.2,10,00,004/- only as deduction, then there is no reason to tax any amount in excess of the above said figure. However this factual aspect requires verification at the end of the AO. Accordingly for the limited purposes of verification of the above said aspect, we restore this to the file of the AO. Accordingly the order passed by the Id CIT(A) would stand modified. The assessee may be provided with adequate opportunity of being heard.

9. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the open court on **February, 2020.**

Sd/-
(N.V Vasudevan)
Vice President

Sd/-
(B.R Baskaran)
Accountant Member

Bangalore,
Dated, 4th February, 2019.
/ vms /

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore

1. Date of Dictation
2. Date on which the typed draft is placed
before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
.....
4. Date on which the fair order is placed
before the dictating Member
5. Date on which the fair order comes back to the Sr.
P.S.
6. Date of uploading the order on
website.....
7. If not uploaded, furnish the reason for doing so
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8. Date on which the file goes to the Bench Clerk
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9. Date on which order goes for Xerox &
endorsement.....
10. Date on which the file goes to the Head Clerk
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11. The date on which the file goes to the Assistant
Registrar for signature on the order
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12. The date on which the file goes to dispatch section for
dispatch of the Tribunal Order
13. Date of Despatch of Order.
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