IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI

BEFORESHRI G.S.PANNU, HON'BLE VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No.6659/Del/2015, A.Y.2009-10)

Income Tax Officer, Ward 32(5), New Delhi	Vs.	Sh. Avirook Sen, House No. V-30/4, DLF Phase-III, Gurgaon, Haryana
(Appellant)		**(Respondent)**

Appellant by	Sh. Vivek Bansal, Adv. & Sh. Vishal Chechi, Adv.
Respondent by	Sh. Anuj Garg, Sr. DR

Date of Hearing	03/04/2024
Date of Pronouncement	12/04/2024

ORDER

PER G.S.PANNU, V.P.:

This appeal has been preferred by the Revenue against the impugned order dated 15.10.2015 passed by CIT(A)-14, New Delhi in appeal no. 15/11-12/IT/Del/2015-16, wherein an addition of Rs. 2,13,08,444/- made by AO in the income of assessee for the income of A.Y. 2009-10 was deleted.

2. The brief facts leading to this appeal state that Ld. AO added an amount of Rs. 2,00,00,000/- received by the respondent-assessee from his employer INX Media after his termination from service and Rs. 13,08,444/-

received as perquisites from the employer has been added in the total income of the assessee as profits in lieu of salary for A.Y. 2009-10, vide assessment order dated 30.03.2011 passed u/s 143(3) of the Income Tax Act, 1961. Assessee preferred an appeal against the order passed by the AO before Ld. CIT(A). Ld. CIT(A) allowed assessee's appeal and set aside AO's addition thereby leading to this appeal.

3. Revenue Department has filed this appeal raising following grounds :

> "1. Whether the Ld. CIT(A) was justified in holding that the payment of Rs. 2 crore received by the assessee from his employer was not salary though clause (i) sub section (3) of section 17 expressly provides that such payments are profits in lieu of salary.
>
> 2. Whether the Ld. CIT(A) was justified in deciding the issues involved in the case on the basis of judgment of the Hon'ble Delhi High Court in the case of Khanna & Annadhanam vs CIT 258 CTR (Del) 72 where the assessee was a chartered Accountancy Firm.
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> 3. Whether the Ld. CIT(A) was justified in deciding the issue involved in the case on the basis of judgement of the Hon'ble Delhi High Court in the case of CIT vs Deepak Verma ITA No. 1431 of 2008, where the payment was voluntary which is not the case with the present assessee.
>
> 4. Whether the Ld. CIT(A) was justified in ignoring the judgements of Hon'ble Madras HighCourt in the case of C.N.Badami vs CIT(1999) 240 ITR 263(Mad) and P.

Arunachalam vs.CIT(2000)240 ITR 827 (Mad) relied upon by the Assessing Officer.

5. Whether the Ld. CIT(A) was justified in deleting the addition of Rs.13,08,444/- though this sum was received as perquisite by the assessee from his employer."

4. Respondent-Assessee appeared in the Tribunal after issuance of notice and submitted detailed paper book.

5. We have heard the parties through their representatives and perused the material available on record.

6. The main point for consideration under appeal is as to whether the payment of Rs. 2 crore received by the assessee as lump sum amount after his termination from service and Rs. 13,08,444/-received for the purchase of new car, can be treated as profits in lieu of salary as provided u/s17(3)(i) and taxable ?

7. Ld. DR has argued that the Assessing Officer was right in treating Rs.2 crore received by the assessee from his employer after his termination as compensation amount as component of salary along with Rs. 13,08,444/- as perquisites. He has further argued that Ld. CIT(A) has failed to differentiate the facts of the instant case with the facts of referred case declared by the Delhi High Court reported in CIT vs. Deepak Verma, (2010) 194 taxman 265 (Delhi) as the assessment in that case was pertaining to the A.Y. 2001-02 i.e. before the insertion of Section 17(3)(iii) in the Act with

effect from 01.04.2002. He has further argued that the Ld. AO was right in carrying out the aforesaid assessment by treating the aforesaid receipt of assessee as profits in lieu of salary.

8. Ld. Counsel for the assessee has argued that the Respondent-assessee received the aforesaid amount of Rs. 2 crore as lump sum amount as a settlement out of court with the employer (INX Media) of the assessee and voluntary settled the case as the reputation of the assessee was diminished due to extreme harassment and ill treatment caused by the employer. He also argued that the additional amount of Rs. 13,08,444/- received from the employer (INX media) for the purchase of new car could not have been treated as taxable income as prequisite. He has relied on Deepak Verma (supra), wherein Hon'ble Delhi High Court has held that if payment is made as ex gratia or voluntary by an employer out of his own sweet will and is not conditioned by any legal duty or legal obligation, either on sympathetic grounds or otherwise, such payment is not to be treated as profit in lieu of salary under sub clause (i) of section 17(3). He has further submitted that the AO has made the addition by specifically relying on sub-clause (i) of Section 17(3) and at this stage, the dispute is only in respect of the assessment made u/s 17(3)(i) only and prayed to confirm the impugned order passed by Ld. CIT(A).

9. Ld. Counsel for the assessee has cited Arunbhai R. Naik vs. Income Tax Officer [2015] 65 taxmann.com 216 (Gujarat) wherein Hon'ble Gujarat

High Court while interpreting Section 17 of the Act, held that payment of ex gratia compensation received by the employee u/s 17(3) if voluntary in nature without being any obligation on part of employer to pay any further amount to assessee in terms of service rules, it would not amount to compensation in terms of section 17(3)(i).

10. It is clear that the Ld. AO while making addition of Rs. 2,13,08,844/- u/s 17(3)(i) has relied upon C.N.Badami vs. CIT [1999] 240 ITR 263 (Mad) and P.Arunachalam vs. CIT [2000] 240 ITR 827 (Mad). Hon'ble Madras High Court in C.N.Badami (supra), has held that the amount received for encashment of leave salary would be a profit in lieu of salary and taxable under "voluntary Separation Programme". The Hon'ble Madras High Court in P. Arunachalam (supra) also followed the dictum of Badami (supra). However the perusal of the aforesaid citation shows that the Hon'ble Madras High Court held as above as there was an existing agreement, whereas there was no such agreement between assessee and his employer in the facts of the present appeal, hence, the facts of the present case are easily distinguishable. Ld. CIT(A) has rightly held that the receipt of the aforesaid amount, being on account of out of court settlement and on account of the value of perquisite, deserved to be deleted and were so rightly deleted.

11. As far as the argument of Ld. DR with respect to the applicability of Section 17(3)(iii) of the Act are concerned, the order dated 09.04.2009 passed by Co-ordinate Bench of ITAT Mumbai in Mahindra and Mahindra

ltd. vs. DCIT, MANU/1U/0033/2009, is relevant. The relevant para 19.6 reads as under :-

> *"……. In our considered opinion the learned Departmental Representative has no jurisdiction to go beyond the order passed by the Assessing Officer. He cannot raise any point different from that considered by the A.O. or CIT(A). His scope of arguments is confined to supporting or defending the impugned order. He cannot set up an altogether different case. If the learned D.R. is allowed to take up a new contention de hors the view taken by the Assessing officer that would mean the learned A.R. stepping into the shoes of the CIT exercising jurisdiction under Section 263. We, therefore, do not permit the learned D.R. to transgress the boundaries of his arguments."*

In the present appeal, neither Ld. AO nor Ld. CIT(A) has considered the point raised by Ld. DR and the scope of arguments of ld. DR in the present appeal has to confine to the grounds taken in the appeal and he cannot be permitted to set up altogether a new case and assume his position as that of Ld. CIT under section 263 of the Act.

12. As the payment of ex-gratia compensation was voluntary in nature without there being any obligation on the part of employer to pay further amount to assessee in terms of any service rule. it would not amount to compensation in terms of section 17(3)(i) of the Act. The impugned addition was rightly deleted by the Ld. CIT(A). The aforesaid point is accordingly determined against the revenue department. The appeal is accordingly not

sustainable as we don't find any error of law or fact in the impugned order passed by Ld. CIT(A). The department appeal is liable to be dismissed.

13. In the result, the appeal of Revenue is dismissed.

Order pronounced on 12/04/2024.

Sd/-	Sd/-
(ASTHA CHANDRA)	**(G.S.PANNU)**
JUDICIAL MEMBER	**VICE PRESIDENT**

Dated: 12/04/2024

Binita, Sr. PS/SR Bhatnagar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI