

Sec. 89 relief is available in respect of arrears of perquisites: ITAT

Summary – The Agra ITAT in a recent case of Rajesh Kumar., (the Assessee) held that Relief under section 89 is available in respect of salary and so, it is, by virtue of section 17(1)(iv), as a natural corollary thereof, available qua perquisites

Facts

- During the relevant year, arrears being arrears in lieu of employer's contribution to the newly implemented 'Defined Contribution Scheme', were received by the assessee-employee from his employer GAIL. The assessee had claimed relief under section 89.
- The Assessing Officer held that section 89 is applicable where an assessee is in receipt of a sum in the nature of salary, being paid in arrears, or in advance. On the contrary, the payments made by the employer were value of perquisites under section 17(2) as per Form No. 12BA, and this amount could not qualify for relief under section 89(1) and, therefore, relief claimed under section 89(1) was disallowed.
- The Commissioner (Appeals) had held that as relief under section 89 was not available *qua* a perquisite, relief claimed by the assessee was not allowable. Further, he held that rule 21A and Form 10E did not relate to the contribution in question and rule 21A(1)(e) read with rule 21A(6) did not help the assessee and that GAIL's Circular No. CO/HR/Pol/W-19, dated 4-4-2014, mentioned that contributions over and above the exemption limit prescribed under the Act would be taxable in the hands of the employees, as perquisite.
- On appeal:

Held

- The Commissioner (Appeals) has correctly held that section 89 does not talk of perquisite, but of, *inter alia*, salary, whereas the relief claimed by the assessee pertains to 'perquisite' and not 'salary'; that 'perquisite' within the meaning of section 17(2)(vii) means contribution in excess of one lakh rupees to an approved superannuation fund by the employer in respect of an assessee.
- However, the following position appears to have escaped the knowledge of the Commissioner (Appeals). Section 17(1) defines 'salary' and 'perquisite' separately for the purposes of sections 15 and 16. Section 15 is the charging section *qua* income from salary, whereas section 16 deals with deduction there-from. Section 17(1)(iv) says that 'salary' includes, *inter alia*, perquisites. Relief under section 89 is available in respect of salary and so, it is, by virtue of section 17(1) (iv), as a natural corollary thereof, available *qua* perquisites. Rule 21A of the Rules pertains to salary with respect to which section 89 grants relief. Therefore, the said rule does pertain to perquisite as well. Rule 21A(1)(a) states that where any portion of the assessee's salary is received in arrears or in advance, the relief under section 89 shall be in accordance with the provisions of rule 21A(2). Hence, it relates

to the contribution under consideration also. Section 192(2)(A) provides *inter alia*, that where an assessee, being a government employee in a company, is entitled to relief under section 89(1), he must furnish particulars for the purposes of TDS, as prescribed. Rule 21AA provides the prescription, in the shape of form 10E. Under Form 10E, the particulars required to be furnished are those of income referred to in rule 21A. Rule 21A, as noted, talks of, *inter alia*, income by way of salary. 'Salary', as per section 17(1)(iv), includes perquisites. The contribution in question is, admittedly, a perquisite. So, the circle is complete. Form 10E, ergo, does relate to the contribution under consideration. Then, rule 21A(1)(e) read with rule 21A(6) may not help the assessee, but rule 21A(1)(a) read with rule 21A(2) does. Rule 21A(1)(e) read with rule 21A(6) concerns cases where, *inter alia*, the payment is not in the nature of salary paid in arrears or in advance, whereas rule 21A(1)(a) read with rule 21A(2) pertains to cases, *inter alia*, where salary is received in arrears or in advance. The assessee's case falls under the latter category. So, rule 21A(1)(e) read with rule 21A(6) being not helpful to the assessee, is, in no manner, detrimental to the assessee's claim. Further, it is true, that as per the Circular dated 4-4-2014 of GAIL, contributions over and above the exemption limit prescribed under the Act would be taxable in the hands of employees, as perquisite. Section 17(2)(vii) also treats such a sum as a perquisite. But, to hark back, as per section 17(1)(iv), perquisite is salary and receipt of salary paid in arrears or in advance is entitled to relief under section 89. It is trite that delegated legislation cannot override the provisions of the Act. Moreover, the circular involved herein, is not a circular issued by the CBDT, but an internal circular of GAIL, which is of no consequence over the provisions of the Act.

- Thus, relief under section 89 is available *qua* a perquisite. Rule 21A and Form 10E do relate to the contribution in question. Rule 21A(1)(a) read with Rule 21A(2) applies to the assessee's claim. The GAIL Circular does not override the provisions of section 89, under which, the assessee is entitled to relief.
- In view of the above, the grievance of the assessee is justified and it is accepted as such. The order under appeal is, thus, reversed. The claim of the assessee under section 89 was directed to be allowed forthwith.