

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI G. MANJUNATHA, AM**

ITA No. 1327/Mum/2016

(A.Y. 2011-12)

The Asst. Commissioner of Income Tax, Circle 19(3) Matru Mandir, Tardeo Road, Mumbai-400 007	Vs.	Shri Sameer Sudhakar Dighe, 8 th Floor, Shreepati Annexe, Gowalia Tank Road, Grant Road, Mumbai-400 036
Appellant	..	Respondent
PAN No. ABWPD5514H		

Revenue by : M.V. Rajguru, Sr. DR

Assessee by : Neelkanth Khandelwal, AR

Date of hearing: 27-03-2018 **Date of pronouncement :** 13-04-2018

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the Revenue is arising out of the order of Commissioner of Income Tax-30, Mumbai [in short CIT(A)], in appeal No. CIT(A)-30/AC19(3)/238/2014-15 dated 03-12-2015. The Assessment was framed by the Asst. Commissioner of Income Tax, Circle-16(2), Mumbai (in short 'ACIT') for the A.Y. 2011-12 vide order dated 25-03-2014 under section 143(3) of the Income Tax Act, 1961(hereinafter 'the Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the addition made by AO on the amount received in regard to Benefit Match fee by invoking the provisions of section 56(vii) of the Act treating the same as revenue receipt instead declared by



assessee as capital receipt. For this Revenue has raised the following ground No. 1: -.

"1. Whether on the facts of the case and in law the Ld. CIT(A) has erred in deleting the addition of ₹ 50,44,000/- made under section 56(vii) by terming the same as capital receipt?"

3. Briefly stated facts are that the assessee is a retired cricketer appointed as cricket coach by BCCI to train the players at national level. The assessee retired from international cricket in the year 2002. During the year under consideration i.e. FY 2010-11 a benefit match was arranged by BCCI for assessee. The assessee received net proceeds of ₹ 50.44 lakhs and credited the same to the capital account. The AO require the assessee to explain as to how this capital receipt. The assessee explained the benefit match is a game played for retired sportsman to appreciate personal talent and skill in sports and accordingly the funds collected on behalf of benefit match is capital receipt. The assessee placed reliance on CBDT Circular No. 477 [F.No.199/86-IT(A-1)], dated 22-1-1986, but the AO invoked the provisions of section 56(vii) of the Act and therefore, treated the receipts from benefit match as revenue receipt and brought to tax accordingly. Aggrieved, assessee preferred the appeal before CIT(A).

4. The CIT(A) after considering the submissions of the assessee as well as the board circular No. 447 [F.No.199/86-IT(A-1)] dated 22-01-1986 also the provisions of section 56(vii) of the Act treated the receipts as capital receipts by observing in Para 6.7 to 6.11 as under: -

"6.7 I have carefully considered the rival contentions on the issue of treating the amount of Rs. 50,44,000/- received from conducting the benefit



match as income and assessing the same in the hands of the assessee and also the documents submitted by the appellant in support of his arguments. The appellant treated the same as capital receipt and credited to the capital account without offering the same for tax. Whereas the AO, on the basis of the statement recorded by the Addl. DIT(Inv.), Pune from the MD of the company which organized the match wherein it was stated that the tax implications were borne by the appellant, and stating that the appellant has not played for the country and the amount received is from conducting a benefit match and is not a capital receipt as claimed by him, since a profit and loss account is drawn by the organizers it is a revenue receipt and is taxable u/s 56(vii) of the Act. Accordingly, the AO assessed the same as 'Income from Other Sources'.

6.8 The appellant is an employee of Air India and represented team India at international level and team Mumbai at the national level as wicket keeper. In view of the fact, the argument put forth by the AO in the assessment order, that the appellant has not represented India is not correct. Of course, the amount is received from benefit match and not for representing India. But going into the circumstances, the benefit match is organized after obtaining a No-objection letter from the BCCI, which is a regulatory body for cricket in India. Generally, a benefit match is a game played for a well-known sports person to appreciate his personal talent and skill in the sports for a person retired from such



sport. The said amount is paid as a token of esteem and respect towards the person. In this case the match is organized by a company called M/s HVK International M. Ltd in coordination with BCCI. The organizers must have drawn the P&L account to get the correct balance of amount to be transferred to the beneficiary after the expenditure incurred on organizing the match. In view of the same, the conclusion drawn by the AO that the P&L account is drawn and the amount is a revenue receipt is not a correct conclusion. As submitted by the appellant, the nature of receipt will not change because of the drawing of the P&L account.

6.9 The AO, assessed the receipt u/s 56(vii) of the Act which is brought in to the statute w.e.f 01-10-2009 which says that any sum of money without consideration, the value which exceeds the amount of Rs. 50,000/- received by an individual or HUF the whole of the aggregate value of the sum is assessable as 'Income from other Sources'. The amendment is brought in through introducing the provision, to plug the loopholes and to prevent money laundering at the time of abolition of gift tax. The amount received by the appellant is no way fit into this provision, as stated by the AO in the assessment order, to make the addition. This amount represents the token of gratitude from the fans and followers by attending the benefit match conducted in honour of the retired sports person and in no way can be construed as a transaction



formulated for the purpose of money laundering and also not income camouflaged as gift.

6.10 The Circular No. 447 dt. 22-01-1986 of the CBDT also states that an award received by a non-professional sportsman will not be chargeable to tax in his hands, as it would not be in the nature of income. The AO discussing the same in the order and stating that the same is not acceptable in the case of the appellant as the receipt is in the nature of revenue whereas the fact is that the same cannot be linked to any source and is received by organizing a benefit match and definitely falls into the category of capital receipt. In view of the same the AO treating the amount received by the appellant from the benefit match as income is not a correct proposition.

6.11 The judicial pronouncements referred, supports the case of the appellant. In the case of G. R. Viswanath vs. ITO 29 ITD 142 Hon'ble ITAT, Bengaluru held that the assessee being full time employee of SBI and not a professional cricketer, the amount given by admirers or lovers of cricketer in token of appreciation of qualities possessed by assessee- such amounts are not liable to tax. In the present case also the appellant is working with Air India and not a professional cricketer and the amounts are given by the admirers from the benefit match and therefore the logic applied by the Hon'ble ITAT in the case of G.R. Viswanath clearly applies to the appellant case. The decision arrived by the Hon'ble ITAT in the case of Kapil Dev and Abhinav



Bindra also supports the case of the Appellant. In view of the reasons stated in the above discussion and also respectfully following the decision arrived at by the Hon'ble ITAT, Bengaluru and ITAT, Delhi on the similar set facts, the amount received by the appellant from the benefit match is given to him by the admirers or lovers of cricket in token of their appreciation of the qualities possessed by the appellant as a cricketer and the amount of Rs.50,44,000/- is not includable as taxable income and the AO is directed to delete the addition considered on this count. Appellant succeeds on this ground and accordingly, the appeal is allowed."

Aggrieved, Revenue preferred the appeal before Tribunal.

5. Before us, the learned Sr. Departmental Representative, Shri M.V. Rajguru relied on the assessment order and stated that in view of amendment brought out by the Finance Act 2009 in section 56(vii) of the Act with effect from 01.10.2009, receipt of individual fees in the sum of money from property without consideration, the aggregate value exceeds ₹ 50,000/- the whole amount of aggregate sum will be treated as income. The learned Sr. Departmental Representative also drew our attention to the fact recorded by AO that the assessee Shri Sameer Sudhakar Dighe is neither a player nor represented in International Cricket and also he is not part of Indian Team at any given time. In view of these facts, the learned Sr. Departmental Representative urged the bench to restore the order of the Assessing Officer.

6. Before us the learned Counsel for the assessee stated that the assessee has represented team India at international level and team Mumbai at national level as a Wicket Keeper. The assessee retired from



the cricket in the year 2002 and was appointed as cricket coach by the BCCI to train the players at national level. The learned Counsel for the assessee filed data from Wikipedia about his domestic, international, coaching career and the same reads as under:

“Sameer Dighe - (born 8 October 1968, in Bombay - now Mumbai) is an Indian cricketer. He is a right-handed batsman and a wicket-keeper. His main chance at international cricket did not come until the 1999–2000 season, at which time he was 31 years of age.

Domestic Career

Sameer Dighe made his First-class debut for Mumbai cricket team against Gujarat cricket team during the 1990-91 Ranji Trophy season where he scored 107 runs and finished season with 440 runs in 6 innings at an average of 73.33 with one half-century and two hundreds. He played 58 matches for Mumbai cricket team in which he took 176 catches and did 23 stumping's and scored 3,054 runs. He was also captain for 1999–00 Ranji Trophy.

International Career

On the final day of the Third Test against Australia in Chennai, Dighe made an unbeaten 22 on debut, after a collapse during the run-chase, guiding the Indians securing a historic 2-1 series win. Sourav Ganguly later said that Dighe was to become the first-choice wicket-keeper for the



country, but numerous wicket-keeping errors lead to his replacement.

Coaching Career

Dighe later entered coaching, serving as head coach of Hong Kong at the 2007 ICC World Cricket League Division Three tournament replacing Robin Singh. He was coach of Tripura cricket team from 2006 to 2008 as well as fielding coach of Mumbai Indians during 2008 Indian Premier League but was replaced by Jonty Rhodes.

Later, he was named as selector of Mumbai cricket team in 2009.”

7. We have heard rival contentions and gone through facts and circumstances of the case. The facts available in public domain are that the assessee has played national as well as international cricket. The assessee has played international test matches numbering 6 and ODI's numbering 23. The assessee is full time employee of Air India. The benefit match was conducted by the BCCI, which is a regulatory body for cricket in India to appreciate the personal talent and skill in this sport because the assessee is a retire sportsman and the proceeds arising out of this benefit match is in the nature of award. There is no direct nexus between the payment and assessee's profession and these receipts being capital in nature cannot be brought to tax. This view of ours is supported by the decision of co-ordinate Bench in the case of G.R. Viswanath vs. ITO (1989) 29 ITD 0142 of Bangalore Bench, wherein exactly on similar facts the issue was decided vide Para 7 to 10 as under:

“7. It was argued for the revenue that the amounts are paid to the assessee because of his



professional activity and that the same constitute taxable income. Records show that the receipts were not the result of any professional activity. He is a full-time employee with the State Bank of India holding the post of an officer. Cricket was not for his living. It was stated at the bar that there is no professional cricket in India. The assessee obviously plays for love of cricket and because of his great talents he had been in the team that represented India for playing in Pakistan. These facts are fairly certain from the records.

8. A decision of the Delhi Bench of the Tribunal in the case of Navab Mohd. Mansur Ali Khan [1975] Tax. 40(6)-21 was cited wherein it is held that an award given as "best batsman" did not amount to any professional income. The CBDT has, in a Circular No. 447 [F No. 199/86-IT(A-I)] dated 22-1-1986, clarified that awards received by a sportsman who is not a professional will not be liable to tax. As we have pointed out, cricket was not the profession of the assessee, but only a vocation.

9. It may be apposite to refer to the decision of the Madras High Court in the case of CIT v. M. Balamuralikrishna [1988] 171 ITR 447 wherein it is held that amounts received from admirers and fans of a musician in appreciation of his services rendered as a musician are not his taxable income. It has been held that the payment has no nexus to the profession. Here, the assessee was a professional musician.



10. The case of the assessee before us is on a better footing. He is not a professional cricketer. The amounts were given to him by the admirers or lovers of cricket in token of their appreciation of the qualities possessed by the assessee as a cricketer. In the circumstances, we are of the view that the amount of Rs. 4,75,000 received abroad is not includible in the taxable income."

8. Similarly, the co-ordinate Bench of Delhi Tribunal in the case of *Abhinav Bindra vs. DCIT (2013) 28 ITR (Trib) 0376 (Delhi)* has considered the identical issue and also considered the amendment provisions of section 56(2)(v) of the Act and held as under:-

"13. Thus, Section 14 provides the various heads under which income has to be computed and Item No. F which is 'income from other sources' is a residuary head i.e. the income which is not assessable under any of the other heads, viz., salary, income from house property and gains from business or profession and capital gains is to be assessed under the head 'income from other sources'. However, for applicability of Section 14 and thereafter Section 56, what is required is the receipt in the nature of income. In Circular No.447, it has been clearly stated "In view of this, it is clarified that such awards in the cases of a sportsman, who is not a professional, will not be liable to tax in his hands as it would not be in the nature of income." Therefore, as per the Circular, the receipt by way of award by a sportsman who is not a professional sportsman will not be in the nature of income. In the



order of learned CIT(A), he has distinguished between the words "reward" and "award", of course with reference to Section 10(17A). We have already stated that Section 10(17A) is not applicable where the above Circular is applicable. We further state that if we read the Circular as a whole, it is clear that the purpose of the Circular is to encourage the sportsmen, especially those who are not professional sportsmen.

14. Coming back to the facts of the assessee's case, Shri Abhinav Bindra is the first person in the history of independent India to have won the Olympic Gold Medal. In a country whose population is more than 100 crores, if a sportsman who is not a professional sportsman has won the gold medal for the first time after 60 years of independence of the country and he has been given the awards/rewards/prizes mainly by various Governments local authorities, trusts and institutions and of course some corporate/individuals, a liberal construction of Circular No.447 is required. Considering the facts of the case and the nature and spirit of Circular No.447, we hold that in the case of the assessee, viz., Shri Abhinav Bindra, all the rewards/prizes/gifts received by him are covered by Circular No.447 dated 22nd January, 1986 and, therefore, should not be treated as income in his hands. Accordingly, the addition of Rs.63,10,601/- made by the Assessing Officer and the enhancement of



Rs.2,34,00,000/- made by the learned CIT(A) is deleted.”

9. Further, we find that the AO has applied the provisions of section 56(2)(vii)(a) of the Act. The relevant provision of section 56(2)(vii)(a) of the Act reads as under:-

“(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009 5[but before the 1st day of April, 2017]—

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;”

10. The AO assessed the proceeds of benefit match of the assessee under section 56(2)(vii)(a) of the Act, which is brought in the statue book with effect from 01.10 2009. But we find that this amount represents the gratitude from the fans and followers by attending the benefit match conducting in honor of the assessee, who is a retired cricketer of international repute. This type of receipts has specifically been exempted by the CBDT circular No. 477 [F. No. 199/86-IT(A-1)] dtd. 22.01.1986, which states that the amount paid to amateur sportsman who is not a professional will not be liable to tax in his hands as it would not be in the nature of income. The assessee was an amateur cricketer and his profession is employment with Air India from where he is getting salary. He played the game of cricket for India as his passion and the receipts of the net proceeds for the benefit match was only in the nature of appreciation of his personal achievements and talent and thus, cannot be brought to tax by invoking the provisions of section 56(2)(vii)(a) of the



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Act. This proceeds from benefit match received by assessee is in appreciation of his past achievements in the International Cricket arena and such type of receipt cannot be taxed because these type of receipts are specifically exempted. Accordingly, we are of the view that the CIT(A) has rightly deleted the addition and we confirm the order of CIT(A).

11. In the Result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 13-04-2018.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 13-04-2018

Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
 2. The Respondent.
 3. The CIT (A), Mumbai.
 4. CIT
 5. DR, ITAT, Mumbai
 6. Guard file.
- //True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI