

No perquisite in hands of director if he had no employer-employee relationship with company

Summary – The Mumbai ITAT in a recent case of Keshavji Bhuralal Gala, (the Assessee) held that To treat any sum as a perquisite in lieu of salary as per section 17(2)(iii) it is necessary and incumbent on part of Assessing Officer to establish on record that a benefit in nature of salary was given by an employer to an employee

Facts

- Assessee and his wife as co-owners purchased certain immovable properties from a company in which assessee was also director.
- Assessing Officer observed that company by selling properties to assessee at a price lower than market value had given a benefit to assessee which was in nature of perquisite as provided under section 17(2)(iii) and accordingly made addition to income of assessee.
- On appeal, the Commissioner(Appeals) upheld order of Assessing Officer.
- On appeal to the Tribunal:

Held

- Without making any enquiry or bringing material on record to demonstrate that stamp duty value is actual fair market value of property, Assessing Officer cannot make addition in case of a buyer of property by treating it as perquisite as such deeming provision providing for adoption of stamp duty value as deemed sale consideration is applicable under specific circumstances and cannot be applied to other provisions of Act. Further, to treat any sum as a perquisite in lieu of salary as per section 17(2)(iii) it is necessary and incumbent on part of Assessing Officer to establish on record that a benefit in nature of salary was given by an employer to an employee. Without factually establishing existence of employer-employee relationship between company and assessee it cannot be assumed that assessee has been given a benefit in lieu of salary, even, in absence of contract of employment between company and assessee. Since there was nothing on record nor any positive finding by Assessing Officer on basis of any enquiry to suggest that fair market value was value determined for stamp duty purpose, addition made by Assessing Officer by treating difference in value between stamp duty valuation and actual sale value could not have been treated as perquisite under section 17(2)(iii).