

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC-1', NEW DELHI**

**Before Sh. N. K. Saini, Accountant Member**

**ITA No. 1087/Del/2016 : Asstt. Year : 2009-10**

Dr. SB Kalidhar, Villa 709, Gillco Valley, Kharar, SAS Nagar, Punjab-140301	Vs	Income Tax Officer, Ward-4, Sector-14, Hisar-125001
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. ABSPK1518Q</b>		

**Assessee by : Sh. SB Kalidhar**

**Revenue by : Sh. F. R. Meena, Sr. DR**

<b>Date of Hearing : 22.09.2016</b>	<b>Date of Pronouncement : 28.09.2016</b>
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**ORDER**

This is an appeal by the assessee against the order dated 12.01.2016 of Id. CIT(A), Hisar.

2. The only grievance of the assessee in this appeal relates to the denial of exemption u/s 10(10AA)(ii) of the Income Tax Act, 1961 (hereinafter referred to as the Act) towards Leave Encashment to the extent of Rs.1,94,340/-.

3. Facts of the case in brief are that the assessee filed the retrun of income on 25.05.2009 declaring an income of Rs.4,06,000/- which was processed u/s 143(1) of the Act. The AO observed that the assessee in the computation of total income annexed with the return of income claimed a sum of

Rs.4,94,340/- received as Leave Encashment to be exempted u/s 10(10AA) of the Act. The AO was of the view that the assessee was entitled for exemption on account of Leave Encashment upto return of Rs.3,00,000/-. He accordingly made the addition of Rs.1,94,340/- and assessed the income at Rs.6,00,340/- by observing as under:

*“In view of the finding given in the foregoing paras, the employee of the CCS HAU cannot be termed as Govt. employee as neither they are under the control of Haryana Govt. nor their pay is debited to the consolidated funds of the state. Application of CSR Vol. II does not confer vice-versa status as Govt. employee under any rule/authority as claimed by the assessee. Hence, it is clear that university employees are covered u/s 10(10)(iii) of the Income-tax Act, 1961. In view of these facts, the exemption allowable to the assessee in respect of gratuity and leave encashment is only 3,00,000 lacs which has already been claimed/ allowed. Thus, the claim of the assessee for exemption of leave encashment of Rs.1,94,340/- is not in order and is added back to the income of the assessee.*

*Penalty proceedings u/s 271(1)(c) are initiated for furnishing of inaccurate particular of its income.*

*In view of the discussion in the foregoing paras income of the assessee is computed as under –*

<i>Returned income</i>	<i>: Rs.4,06,000/-</i>
<i>Addition on account of gratuity as discussed above</i>	<i>: Rs. 1,94,340/-</i>
<b><i>Assessed Income</i></b>	<b><i>: Rs.6,00,340/- ”</i></b>

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) who sustained the addition made by the AO by observing in para 7.2.10 of the impugned order as under:

*“7.2.10 Considering the above discussion I hold that the appellant is neither an employee of State Government nor a holder of civil post under a State for the provisions of Income Tax Act. In Section 10(10AA) full exemption from leave encashment at the time of retirement is available to employees of Central Government and State Government only. For other employees the exemption is available only up to 3 lakhs. The present case of the appellant falls under the second category which is covered by the provisions of section 10(10AA) (ii) of Income Tax Act. I hold that the appellant who is an employee of Haryana Agricultural University cannot be regarded as employee of State Government for the purpose of Income Tax. The present case is covered by Section 10(10AA)(ii) of Income Tax Act and not by Section 10(10AA)(i) of Income Tax Act. Therefore, assessing officer has rightly made the additions on account leave encashment of Rs. 1,94,3407- to the total income of the assessee. **Appeal of the appellant is dismissed.**”*

5. Now the assessee is in appeal. The Id. Counsel for the assessee at the very outset stated that the issue under consideration has already been decided by the various benches of the ITAT New Delhi in favour of the assessee wherein identical facts were involved. He furnished the copies of the following orders:

- *Sh. Ram Kanwar Rana Vs ITO, Ward-3, Hisar in ITA No. 1307/Del/2016 dated 16.06.2016*
- *Sh. Raghbir Singh Panghal Vs ITO, Ward-3, Hisar in ITA No. 1308/Del/2016 dated 16.06.2016*
- *Sh. Joginder Paul Bhanot Vs ITO, Ward-2, Hisar in ITA No.1219/Del/2016 dated 19.07.2016*
- *Sh. Bhupendra Kumar Nehra Vs ITO, Ward-1, Hisar in ITA No. 1222/Del/2016 dated 20.07.2016*
- *Sh. Ram Dhari Rana Vs ITO, Ward-3, Hisar in ITA No. 1360/Del/2016 dated 10.08.2016*
- *Sh. Anant Kumar Gupta Vs ITO, Ward-1, Hisar in ITA No. 1361/Del/2016 dated 10.08.2016*

6. In his rival submissions the ld. DR supported the orders of the authorities below.

7. I have considered the submissions of both the parties and perused the material available on the record. It is noticed that an identical issue having similar facts has already been adjudicated by the ITAT Delhi Benches, ÷SMC-1ø, New Delhi in ITA No. 1307/Del/2016 for the assessment year 2010-11 in the case of Ram Kanwar Rana Vs ITO, Ward-3, Hisar, wherein the relevant findings have been given in para 10 of the order dated 16.06.2016 which read as under:

*“10. I have heard the rival submissions and perused the relevant material on record. The ld. AR submitted that there is not much difference in the language of section 10(10)(i) and 10(10AA)(i) and the view taken in respect of arrears of gratuity u/s 10(10) should be followed for arrears of leave*

*encashment u/s 10(10AA). The ld. DR supported this proposition. As both the sides are consensus ad idem on the position that the view taken in the context of section 10(10) as applicable to leave gratuity be followed here in the context of section 10(10AA) in the context of leave encashment, I am desisting from independently examining the later provision. In view of the fact that I have held the assessee to be entitled to exemption u/s 10(10)(i) in respect of arrears of gratuity, following the same, I extend the benefit of exemption u/s 10(10AA)(i) in respect of arrears of leave encashment. This ground is allowed.”*

8. Since the facts of the assessee's case are identical to the facts involved in the aforesaid referred to case of Sh. Ram Kanwar Rana. So, respectfully following the order dated 16.06.2016 in the case of Ram Kanwar Rana Vs ITO (supra), the impugned order is set aside and the AO is directed to allow the claim of the assessee on account of Leave Encashment.

9. In the result, appeal of the assessee is allowed.

(Order Pronounced in the Court on 28/09/2016)

**Sd/-**  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 28/09/2016**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**