

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

Before Sh. N. K. Saini, Accountant Member

ITA No. 3715/Del/2016 : Asstt. Year : 2010-11

Hari Ram Rohilla, 245, Defence Colony, Hisar-125001 (Haryana)	Vs	Income Tax Officer, Ward-2, Hisar (Haryana)
(APPELLANT)		(RESPONDENT)
PAN No. AAAHH3551H		

Assessee by : None

Revenue by : Sh. Rajesh Kumar, Sr. DR

Date of Hearing : 17.10.2016	Date of Pronouncement : 26.10.2016
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ORDER

This is an appeal by the assessee against the order dated 18.03.2016 of Id. CIT(A), Faridabad.

2. The only grievance of the assessee in this appeal relates to the denial of exemption u/s 10(10AA) of the Income Tax Act, 1961 (hereinafter referred to as the Act) in respect of the amount received by the assessee towards arrears of leave encashment amounting to Rs.2,51,040/-. Nobody was present on behalf of the assessee neither any adjournments was sought. Therefore, the case is decided *ex-parte* after considering the submissions of the Id. DR on merit.

3. Facts of the case in brief are that the assessee was an employee of Chaudhary Charan Singh Haryana Agricultural University, Hisar (hereinafter called CCSU) and retired from service before 24.05.2010. The assessee filed the return of income on 20.08.2010 declaring an income of Rs.6,05,090/-, which was processed u/s 143(1) of the Act. The AO initiated reassessment proceedings on the premise that the assessee had wrongly claimed exemption u/s 10(10) in respect arrears of leave encashment. He rejected that leave encashment were exempt up to the limit of Rs.3 lac, in the case of the assessee, which limit stood exhausted in the earlier year at the time of their receipt. Since the assessee retired before this cutoff date, the AO opined that the extended benefit of exemption was not available to the assessee. He jettisoned the claim of the assessee for exemption u/s 10(10) of the Act and held that the correct section applicable was section 10(10AA)(ii), since the assessee was an employee of CCSU. The AO held that such employees could not be termed as Government employees and, hence, the benefit u/s 10(10)(i) was not available to the assessee. Resultantly, he made addition towards the amount of arrears of leave encashment received amounting to Rs.2,51,040/-.

4. Being aggrieved the assessee carried the matter to the ld. CIT(A) who echoed the view taken by the AO that the assessee was not a holder of civil post under the State Government and hence not eligible for exemption u/s 10(10)(i) of the Act and upheld the order of the AO on this issue. Feeling aggrieved the assessee has come up before the ITAT by way of filing the present appeal.

5. I have considered the submissions of ld. DR and perused the material on record. It is observed that the Delhi bench of the tribunal in the case of Shri Ram Kanwar Rana vs. ITO, Ward-3, Hisar in ITA No.1307/Del/2016 vide order dated 16.06.2016 has allowed exemption in respect of arrears of leave encashment and the relevant findings are given in paras 9 & 10 of the said order which read as under:

“9. As regards the second amount of Rs.1,88,720/- received by the assessee during the year towards the arrears of leave encashment, it is noticed that the assessee claimed exemption u/s 10(10AA)(i) which was refused by the AO by holding the case to be covered under sub-clause (ii) of section 10(10AA). The ld. CIT(A) affirmed the view taken by the AO on this point, thereby denying the benefit of exemption in respect of the arrears of leave encashment received during the year.

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.”

6. So, respectfully following the aforesaid order dated 16.06.2016, the impugned order is set aside and the AO is directed to allow the claim of the assessee.

7. In the result, appeal of the assessee is partly allowed.
(Order Pronounced in the Court on 26/10/2016)

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

Dated: 26/10/2016

Subodh

Copy forwarded to:

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