

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : SMC-1 : NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No.1579/Del/2016  
Assessment Year : 2010-11

Amar Chand,  
S/o Puran Chand,  
H.No. 1339, Sector13P,  
Hisar  
(PAN: AFQPC3405C)

Vs. ITO,  
Ward-1,  
Hisar

(Appellant)

(Respondent)

Assessee By : Shri Ved Jain, Adv. & sh. Ashish  
Chaddha, CA  
Department By : Shri F.R. Meena, Sr. DR

**ORDER**

This appeal filed by the assessee is directed against the order passed by the CIT(A) on 29.1.2016 in relation to the assessment year 2010-11.

2. The assessee has raised as many as 08 grounds, but he pressed only ground no. 6 relating to confirmation of addition of Rs. 4 lacs made by the AO on account of excess claim of gratuity.

3. The facts related to this issue in brief are that the assessee was initially an employee of Haryana State Electricity Board, which later on, was bifurcated into 4 utilities including Dakshin Haryana Bijli Vitran Nigam Ltd. (DBVNL), whose 100% share capital was owned by the State Government. The assessee retired before 30.09.2009 and received additional amount of gratuity of Rs.4,00,000/-, the TDS was deducted on the said amount. The assessee was getting his salary as per State Rule and claimed deduction of full amount of gratuity. The assessee had made a claim that he was an employee of a local authority and therefore, covered by the provisions of Section 10(10)(i) of the Income Tax Act, 1961 (hereinafter referred to as the Act). However, the AO was of the view that the claim for exemption in respect of gratuity received by the assessee was covered u/s 10(10)(iii) of the Act and as per provisions of this Section, the gratuity was exempted upto the limit of 3,50,000/- for the employees who retired on or before 24.05.2010, thereafter the limit was enhanced to Rs.10,00,000/-. The AO accordingly made the addition of Rs.4,00,000/-.

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) who confirmed the action of the AO by observing in para 5.6 and 5.7 of the impugned order as under:

*“5.6 There are following facts related to DHBVNL which are discussed below for the clarity on the issue under consideration. These facts clearly indicate that the employees of DHBVNL are neither government employees nor they are not holders of civil posts under the state*

*a) DHBVNL is governed by the provisions of Electricity Act, 2003. The provisions of this Act prevail in preparing the accounts wherever there are inconsistency with the Companies Act, 1956. DHBVNL prepares its financial statement in accordance with the financial reporting framework prescribed under the Companies Act, 1956 which comprises of balance sheet, statement of profit and loss, cash flow statement and summary of significant accounting policies. Its accounts are audited as per the provisions of companies Act, 1956. It is obvious from these facts that DHBVNL is a company and follows the accounting principles as applicable to a company.*

*b) HSEB was constituted under the Electricity Supply Act, 1948. Electricity Boards were constituted as semi autonomous bodies to administer the Grid System within the territorial limits of the provinces. Such Boards were in the nature of trading corporation within the meaning of entry 33 of the federal legislative list (as mentioned in the Electricity Supply Act, 1948). Therefore, it is obvious that electricity*

*boards had its own administration and were not totally under the control of Government.*

*c) DHBVNL is a company which has issued and allotted its substantial shares to the government of Haryana. Other shares are held by M/s. Haryana Vidyut Prasaran Nigam Ltd. The share holding of the Government in the company does not make the employees of the company as Government employees.*

*d) The major portion of revenue in the case of DHBVNL is earning from sale of power. It receives subsidy as well as grant from the government. The major expense of DHBVNL includes cost of purchase of power, interest on loans, depreciation and employees benefit expenses etc. These employees benefit expenses include salaries, LTC, pension, leave and gratuity contribution. Hence salaries, pension, gratuity etc are paid to the employees of DHBVNL from its own corpus of funds and it is not from the consolidated funds of the State Government. The retirement benefits are being provided on actuarial valuation basis and as per the certificate of the Actuary in accordance with the provision of accounting standard 15. Government employees are paid salaries, pension and other benefits from the consolidated fund of India and so is not the case of employees of DHBVNL.*

*e) Appointment to the board of Directors of DHBVNL is as per the provisions of section 31 and other provisions of Companies Act, 1956 which includes government officers as well as employees of DHBVNL and similar other corporations.*

*f) Selection of the employees of DHBVNL is being made by Haryana Staff Selection Commission. HSSC is doing selection for not only for Government posts but it is doing selection and recruitment for various posts of Boards/ Corporation/PSUs. The service conditions of the employees of DHBVNL are governed by their own rules and regulations. The functions of the corporations are also governed by regulatory authority on commercial terms.*

*g) DHBVNL has only adopted the Haryana government notification i.e. Haryana Civil Services ( Revised Pension ) Part 1 & Part 2 rules for Pension and pension related matters but it does not mean that by following the rules of State Government, the employees of DHBVNL becomes the Government employees. In light of the above facts, DHBVNL cannot be considered as local authority and its employees cannot be considered as holders of civil posts under a state. Therefore, they are not eligible for exemption u/s. 10(10)(i) of Income Tax Act.*

*5.7 Considering the above discussion, the employees of DHBVNL are held to be not eligible for' exemption*

*u/s. 10(10)(i) of Income Tax Act. They are not covered by Section 10(10)(ii) as they are not receiving gratuity under the payment of gratuity Act, 1972. Hence, employees of the DHBVNL are covered U/s. 10(10)(iii) of I.T. Act for which there is limit on the gratuity amount allowable. CBDT has approved the notification of Rs. 10 lakhs on the maximum amount of gratuity u/s. 10(10)(iii) of Income Tax Act vide its notification no 43/2010 dated 11.06.2010. This notification is applicable to employees who retire on or after 24.05.2010. Before 24.05.2010 the exemption u/s. 10(10)(ii) was restricted to Rs. 3,50,000/-. Therefore, I hold that the appellant who retired before 24.05.2010 is eligible for exemption on gratuity to the extent of Rs. 3,50,000/- only. The addition made by AO of Rs. 4,00,000/- on account of excess claim of gratuity is upheld. The appeal on this ground is **dismissed.**"*

5. Against the order of the Ld. CIT(A), assessee is in appeal before the Tribunal.

6. Ld. Counsel of the assessee has stated that the issues involved in ground no . 6 relating to gratuity is squarely covered by the decision dated 27/5/2016 of the ITAT, SMC-I, Delhi Bench passed in ITA No 1574/Del/2016 (AY 2011-12) (Sh. Jagdeep Singh vs. ITO); ITA No.

1575/Del/2016 (AY 2010-11) (BS Boora vs. ITO); ITA No. 1576/Del/2016 (AY 2010-11) (KS Pannu vs. ITO); ITA No. 1577/Del/2016 (AY 2010-11) {Bhupinder Kumar Bhatia vs. ITO}

Therefore, he requested that by following the same reasoning the present assessee's appeal may be allowed.

7. On the other hand, Ld. DR relied upon the orders of the authorities below and stated that the same may be affirmed.

8. I have heard both the parties and perused the records especially the order of the Ld. CIT(A) and the orders of the Coordinate Bench dated 27.5.2016, as aforesaid. For the sake of convenience, I am reproducing the relevant paras of the ITAT, SMC-I, Order dated 27.5.2016 as under:-

*“10. In the present case, it is not in dispute that the assessee claimed the exemption u/s 10(10)(i) of the Act while the AO allowed the exemption u/s 10(10)(iii) of the Act. In the instant case, it is an admitted fact that the assessee was earlier employee of the Haryana State Government and*

*working in Haryana State Electricity Board which later on was bifurcated into 4 utilities one of which was Dakshin Haryana Bijli Vitran Nigam Ltd. and the assessee was employee of the said corporation, which adopted the Haryana Civil Service (Revised Pension), Part-1 rules issued by the Haryana Government. The Haryana Government Power Department in its notification dated 14.08.1998 provided the conditions at the time of transfer of personnel in Clause 11 which read as under:*

*“The terms and conditions of the services applicable to them on the effective date, the pay, pattern of Dearness Allowances, Additional Dearness Allowances, Interim Relief, City Compensatory Allowances, House Rent allowances, Shift Duty allowances, Hardship allowances, medical facility, medical allowances, all other allowances on the projects, field and head office, leave of all kinds (including casual leave), Pension and Death-cum-retirement benefit, gratuity and leave encashment of every nature shall not be in any way be less*

*favourable to them than those applicable to them immediately before such date.”*

*11. From the above notification, it is clear that the employees who were transferred in the Power Department like the assessee were eligible for all the benefits which were available before their transfer i.e. when they were the employee of the State Government. As per the provisions contained in Section 10(10)(i) of the Act, the exemption was available for death-cum-retirement gratuity to the employees of the State Government, therefore, the assessee was eligible for exemption u/s 10(10)(i) of the Act and not u/s 10(10)(iii) of the Act as has been held by the AO. It is also noticed that the department itself has allowed the exemption to another employees also on the basis of the notification issued on 01.07.1999 by the Government of Haryana in which it has been declared that the Dakshin Haryana Bijli Vitran Nigam Ltd. is a Government Company and there is no existence of public fund and the employees of the wrest while HSEB were very much covered under GPF scheme*

*which applies only to the Government employees. Moreover, the DHBVN also adopted the Haryana Civil Service (Revised Pension), Part-1, Rules, 2009 which shall apply to all pensioners entitled as on 01.01.2006 under PCS Rules, 1953. One of such order dated 18.05.2012 u/s 147/143(3) of the Act for the assessment year 2010-11 in the case of Sh. Jai Dayal Singh Bamel, 488, Sector-7, Faridabad was furnished by the Id. Counsel of the assessee which is placed on record. Therefore, when the department itself had allowed the exemption on account of gratuity to the employees of the same category to which the assessee belongs then there was no reason to deny the benefit to the assessee, in view of the principle of the consistency. I, therefore, considering the totality of the facts delete the addition made by the AO and sustained by the Id. CIT(A).*

*12. The facts of the another cases in ITA Nos. 1574, 1576, 1577, 1580 & 1581/Del/2016 are similar to the facts involved in ITA No. 1575/Del/2016 (supra). Therefore, the findings given in former part of this*

*order shall apply mutatis mutandis to all these appeals.*

*13. In the result, the appeals of the assesseees are allowed.”*

9. After perusing the aforesaid finding of the Coordinate Bench, I am of the considered view that the issue in dispute is similar and squarely covered by the aforesaid decision, therefore, respectfully following the above finding of the Coordinate Bench, the addition in dispute is hereby deleted and accordingly, the issue in dispute is allowed.

10. In the result, the appeal of the assessee stands allowed.

The order pronounced in the Open Court on 02-02-2017.

SD/-

[H.S. SIDHU]  
JUDICIAL MEMBER

Dated, 02-02-2017.

*SRBhatnagar*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

4. CIT (A)

DR, ITAT  
AR, ITAT, NEW DELHI.