

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.13 & 14/Viz/2019

(निर्धारण वर्ष/Assessment Years : 2008-09 & 2011-12)

Thangirala Immanuel,
Development Officer
LIC of India
1st Lane, Brodipeta
Palakol

Vs. Income Tax Officer
Ward-1
Palakol

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

आयकर अपील सं./I.T.A.No.16/Viz/2019

(निर्धारण वर्ष/Assessment Year : 2011-12)

Avadhanula Srinivasa Rao
Development Officer
LIC of India
1st Lane, Brodipeta
Palakol

Vs. Income Tax Officer
Ward-1
Palakol

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

आयकर अपील सं./I.T.A.No.25/Viz/2019

(निर्धारण वर्ष/Assessment Year: 2011-12)

Nuthalapati Ravi Shankar
Development Officer
LIC of India
1st Lane, Brodipeta
Palakol

Vs. Income Tax Officer
Ward-1
Palakol

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

राजस्व की ओर से /Revenue by

: Shri G.V.N.Hari, AR

निर्धारिती की ओर से / Assessee by

: Smt.Suman Malik, AR

सुनवाई की तारीख / Date of Hearing

: 30.04.2019

घोषणा की तारीख/Date of Pronouncement

: 29 .05.2019

आदेश / O R D E R**Per D.S. Sunder Singh, Accountant Member :**

These appeals are filed by the assessees against the orders of the Commissioner of Income Tax (Appeals) [CIT(A)], Rajamahendravaram dated 26.09.2018 and 15.10.2018. Since the facts of the case are identical, these appeals are clubbed, heard together and a common order is being passed for the sake of convenience.

2. All the assessees are development officers in Life Insurance Corporation of India. They have filed the returns of income declaring total income as under :

Sl.No.	Name	A.Y.	Returned Income (Rs.)
(i)	Thangirala Immanuel	2008-09	4,74,240
		2011-12	6,97,120
(ii)	AvadhanulaSrinivasaRao	2011-12	9,88,360
(iii)	Nuthalapati Ravi Shankar	2011-12	12,41,650

The Assessing Officer (AO) found that the assessees have claimed the exemption u/s 10(14) of the Income Tax Act,1961 (in short 'Act') in respect of the following allowances :

Name	A.Y.	Fixed Conveyance Allowance (Rs.)	Conveyance Expenditure (Rs.)	Allowance for Procuring New Business (Rs.)
Thangirala Immanuel	2008-09	41,400	30,804	-
	2011-12	45,500	33,964	33,964
Avadhanula SrinivasaRao	2011-12	45,500	66,097	66,097
Nuthalapati Ravi Shankar	2011-12	45,500	86,582	86,582

2.1. The AO further observed that the above amounts were paid by LIC as salary or profits in lieu of salary and the LIC of India had also deducted the TDS on the amounts as they are taxable. Since the above amounts are taxable, the AO reopened the assessments u/s 147 by issue of notice u/s 148 of the Act and taken up the cases for reassessment. During the reassessment proceedings the assessee have filed the reply stating that the exemption was claimed u/s 10(14), since, the amounts were wholly and exclusively spent on tour and travelling for mobilizing the business and are exempt under rule 2BB(1)(c) of the I.T.Rules. The AO considered the explanation of the assessee and not being satisfied with the explanation,

held that the assessee did not satisfy the following conditions required to be satisfied for allowing exemption u/s 10(14)

- (i) The amount in question is in nature of a special allowance or benefit
- (ii) The special allowance or benefit is not in the nature of perquisite within the meaning of section 17(2)]
- (iii) Such amount is specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of duties of an office or employment of profit
- (iv) Such amount should be specified and notified in the official gazette by the Central Government.

2.2. According to the AO, all the above conditions required to be satisfied cumulatively, to be entitled for exemption u/s 10(14) of the Act and also there must be a notification issued by the Central Government. In the absence of notification and the assessee not being satisfied with the conditions discussed above, the assessee is held to be not entitled for exemption u/s 10(14) of the Act. Accordingly, made the addition to the returned income and assessed the total income of the assessee as under :

Name	A.Y.	Total Income (Rs.)
Thangirala Immanuel	2008-09	5,46,140
	2011-12	8,10,550
AvadhanulaSrinivasaRao	2011-12	11,66,050
Nuthalapati Ravi Shankar	2011-12	14,60.310

3. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) dismissed the appeal of the assessee holding that exemption u/s 10(14) r.w.Rule 2BB is not applicable. In the instant case as it is observed from the foot note of Rule 2BB that additional conveyance allowance and incentive bonus paid to LIC officers are not covered u/s Rule 2BB of Income tax Rules. Accordingly, the Ld.CIT(A) confirmed the addition made by the AO and dismissed the appeal of the assessee.

4. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld.AR argued that the above allowances are fixed allowances and paid by the employer after being satisfied that the amounts were spent wholly for the purpose of carrying out the duties. The assessee also submitted in his explanation that the allowances were received for the purpose of tours and the amounts spent on tour and travelling was more than the allowances received and argued that since the entire amounts were paid wholly and exclusively on tour travelling, the same may be allowed as deduction. The Ld.AR further argued that the AO had reopened the assessment taking support from the

order of the Hon'ble jurisdictional High Court in the case of Ramayya & Others (214 ITR 368) and the issue involved in the decision of Hon'ble High Court of Andhra Pradesh was incentive bonus, but not the allowances which are incurred for the purpose of carrying out the duties. Therefore, argued that the case law relied upon by the Ld.CIT(A) or AO is not applicable in the assessee's case and the assessee's case is squarely covered for exemption u/s 10(14) r.w.Rule 2BB of I.T.Rules. The assessee also relied on the decision of K.Pullarao Vs. ITO in ITA No.1647/Hyd/1995 dated 31.01.2002, wherein the Tribunal has followed the decision of the Hon'ble Jurisdictional High Court in Appeal No.117/1992 and requested to follow the same.

5. On the other hand, the Ld.DR relied on the orders of the lower authorities.

6. We have heard both the parties and perused the material placed on record. On identical facts in the case of Avadhanula Srinivasa Rao, the ITAT allowed the appeal of the assessee following the order of Shri K.Pulla Rao (supra) for the A.Y.2009-10 in ITA no.243/Viz/2017 dated 09.11.2018.

Hon'ble Jurisdictional High Court in the case law referred in appeal No.117/1992 observed that

"We approve the reasoning of the Tribunal. In our view where amounts are paid to the employees by an employer to meet expenses wholly, necessarily and exclusively for the performance of the duties, such amounts can be exempted to the extent it is shown that it has been incurred for the purpose for which it was granted. In the case of employees of the State or Corporations, whether statutory or otherwise, where the employer after having surveyed the actual expenditure necessary for performance of the duty, grants actual allowance generally to all the employees, it is to be presumed that the entire expenditure has been incurred for the purpose for which it has been granted, for if it not incurred for which is has been given, it would entail disciplinary action against the employee. Unless such a case has been initiated against an employee by an employer, the said presumption that the employee has incurred the expenditure for which it is granted, will apply and it will not be necessary for the employees to submit accounts every month to the employer and along with return to the assessing authority. If, in such matters, filing of the accounts and vouchers/receipts are insisted upon to claim exemption under section 10(14) of the Act by the Income-tax authorities, it will lead to voidable waste of time and expenditure and would serve no useful purpose but on the contrary it would be counter-productive. The coordinate bench of the tribunal in the case of B. Chinnaiah & Others (supra) has considered the ratio laid down by the Hon'ble Jurisdictional High Court and allowed the deduction claimed by the assessee. In this view of the matter, we hold that the additional conveyance allowance is exempt under section 10(14) of the Act."

The coordinate bench of the Tribunal in the case of K.Pullarao has considered the ratio laid down by the decision of Hon'ble jurisdictional High Court and allowed the exemption claimed by the assessee and held as under :

"in the case of employees of the State or Corporations, whether statutory or otherwise, where the employer after having surveyed the actual

expenditure necessary for performance of the duty, grants actual allowance generally to all the employees, it is to be presumed that the entire expenditure has been incurred for the purpose for which it has been granted, for if it not incurred for which is has been given, it would entail disciplinary action against the employee. Unless such a case has been initiated against an employee by an employer, the said presumption that the employee has incurred the expenditure for which it is granted, will apply and it will not be necessary for the employees to submit accounts every month to the employer and along with return to the assessing authority. If, in such matters, filing of the accounts and vouchers/receipts are by the Income-tax authorities, it will lead to voidable waste of time and expenditure and would serve no useful purpose but on the contrary it would be counter-productive". The coordinate bench of the tribunal in the case of K. Pullarao (supra) has considered the ratio laid down by the decision of the Hon'ble Jurisdictional High Court and allowed the deduction claimed by the assessee. For the sake of convenience, the relevant portion of the order of the Hon'ble Jurisdictional High Court, which is extracted by the ITAT, as under:-

"We approve the reasoning of the Tribunal. In our view where amounts are paid to the employees by an employer to meet expenses wholly, necessarily and exclusively for the performance of the duties, such amounts can be exempted to the extent it is shown that it has been incurred for the purpose for which it was granted. In the case of employees of the State or Corporations, whether statutory or otherwise, where the employer after having surveyed the actual expenditure necessary for performance of the duty, grants actual allowance generally to all the employees, it is to be presumed that the entire expenditure has been incurred for the purpose for which it has been granted, for if it not incurred for which is has been given, it would entail disciplinary action against the employee. Unless such a case has been initiated against an employee by an employer, the said presumption that the employee has incurred the expenditure for which it is granted, will apply and it will not be necessary for the employees to submit accounts every month to the employer and along with return to the assessing authority. If, in such matters, filing of the accounts and vouchers/receipts are insisted upon to claim exemption under section 10(14) of the Act by the Income-tax authorities, it will lead to voidable waste of time and expenditure and would serve no useful purpose but on the contrary it would be counter-productive. The coordinate bench of the tribunal in the case of B. Chinnaiah & Others (supra) has considered the ratio laid down by the Hon'ble Jurisdictional High Court and allowed the deduction claimed by the assessee. In this view of the

matter, we hold that the additional conveyance allowance is exempt under section 10(14) of the Act."

7. During the appeal hearing the Ld.DR did not bring any other case law to controvert the decisions cited supra. Since the facts are identical, following the ratio laid down by the decision of Hon'ble jurisdictional High Court and the order of this tribunal in the case of A Srinivasa Rao, we are of the opinion that the exemption claimed by the assessee needs favourable consideration. As discussed earlier, the case law relied upon by the AO in Ramayya & Others is related to incentive bonus and is not applicable to the facts of the present case. Accordingly, the orders passed by the Ld.CIT(A) are set aside and the appeals filed by the assessees are allowed.

8. In the result, appeals of the assessees are allowed.

Order pronounced in the open court on 29th May 2019.

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 29 .05.2019

L.Rama, SPS

sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. राजस्व/ The Revenue –Income Tax Officer, Ward-2(2), Palakol
2. निर्धारिती/ The Assesseees-(i) Thangirala Immanuel (ii) Avadhanula Srinivasa Rao (iii) Nuthalapati Ravi Shankar, Development Officers , LIC of India, 1st Lane, Brodipeta, Palakol
3. The Pr.Commissioner of Income Tax, Rajamahendravaram
4. The Commissioner of Income-Tax (Appeals), Rajamahendravaram
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam