

IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.950/Bang/2018
Assessment year : 2013-14

Smt. Vishalakshi Sudheer, L/R of Late Shri M.V. Sudheer, # 88, Lalitha Nivas, 4 <sup>th</sup> Cross, Saraswathipuram, Ulsoor, Bengaluru – 560 008. <b>PAN: ACRPS 1741D</b>	Vs.	The Income Tax Officer, Ward 5(3)(5), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Smt. K. Soumya, Advocate
Respondent by	:	Smt. Priyadarshi Mishra, Addl. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	28.10.2021
Date of Pronouncement	:	18.11.2021

**ORDER**

*Per Chandra Poojari, Accountant Member*

This appeal by the assessee is directed against the order of the CIT(Appeals)-5, Bengaluru dated 29.7.2016 for the assessment year 2013-14 on the following grounds :-

- “1. The learned Commissioner of Income-tax (Appeals) erred in upholding the disallowance u/s.10(10) of the Act in respect of gratuity payments made to the L/R of the deceased-assessee.
2. On the facts and in the circumstances of the case, the learned Commissioner (A) ought to have appreciated that the amount paid towards gratuity by the company to the L/R of the deceased employee was exempted from taxation in the light of

the Board Circular No.573 dt.21.08.1990 and accordingly he ought to have excluded the same from taxation in the hands of the L/R of the deceased-assessee.

3. The learned Commissioner (A) ought to have exempted the leave encashment from taxation in full u/s.10(10AA) of the Act.

4. The learned Commissioner (A) ought to have considered the Circular No.309 dt.3.7.1981 and also the clarificatory letter No.35/1/65-IT(B), dated 5.11.1965 and ought to have held that the entire leave encashment was liable to be excluded from the taxation in the hands of the L/R of the deceased-assessee.

5. The learned Commissioner (A) ought to have appreciated the Board Circulars and instructions were binding on the revenue authorities as settled by the Hon'ble Supreme Court and consequently the relief as sought for by the L/R of the deceased-assessee ought to have been given in full.

6. For these and other grounds that may be urged at the time of hearing of the appeal the L/R of the deceased-assessee prays that the appeal may be allowed.”

2. The assessee in this case is Mr. M.V. Sudheer (Deceased), an ex-employee of Titan Company Ltd. (formerly Titan Industries Ltd). He died on 06.10.2012 while in service. His wife, Smt. Vishalakshi received a sum of Rs.31,39,3500 as gratuity and the same was claimed as exemption. However, the lower authorities granted only Rs.10 lakhs as exemption and the balance amount was taxed. Similarly, the assessee received a sum of Rs.10,44,488 towards leave encashment. Out of this, the AO allowed exemption of Rs.3 lakhs and balance has been taxed. The CIT(Appeals) confirmed the order of the AO. Against this, the assessee is in appeal before us.

3. The Id. AR in support of her contentions relied on the following decisions:-

- (i) CIT v. N.J. Pavri, 237 ITR 472 (Bom)
- (ii) Late Shri Anil Bhatia v. DIT, ITA No.4888/Mum/2010 dated 28.11.2011.
- (iii) L.K. Tangamal, L/R T.H. Kalahasthy v. ITO, 14 TTJ 193.

4. With regard to the gratuity received by the assessee, this issue came up for consideration before the Mumbai Tribunal in ITA No.4484/Mum/2010 for the AY 2001-02 and the Tribunal vide order dated 28.12.2011 held as under:-

“4. We have heard the rival submissions of the parties and perused the records. The Ld. Counsel placed his heavy reliance on the CBDT Circular No.573 dated 21.8.1990. The Ld. Counsel also relied on the decision in the case of Executors of Estate D.S. Mistry vs. Second ITO (Bom) 27 ITD 525. Per contra, the Ld. D.R. relied on the decision in the case of CIT vs. N.S. Pavri 237 ITR 472 (Bom). To sort out the controversy, we have to consider the basic facts as well as provisions Cl. (10) of sec.10 of the Act. It is not disputed before us that the gratuity paid on the sad demise of late assessee Shri Anil Bhatia while in service was towards the employment with M/s. Hindustan Topsun Associates as working director. The amount of gratuity has been shown as assessable in the hands of Late Shri Anil Bhatia, though the return of income was filed by the legal heir Mrs. Anuradha Anil Bhatia. Sec.10(10) reads as under:-

- (i) any death-cum-retirement gratuity received under the revised Pension Rules of the Central Government or, as the case may be, the Central Civil Services (Pension) Rules, 1972, or under any similar scheme applicable to the members of the civil services of the Union or holders of posts connected with defence or of civil posts under the Union (such members or holders being persons not governed by the said Rules) or to the members of the all-India services or to the members of the civil services of a State or holders of civil posts under a State or to the employees of a local authority or any payment of retiring gratuity received under the Pension Code or Regulations applicable to the members of the defence services ;

(ii) any gratuity received under the Payment of Gratuity Act, 1972 (39 of 1972), to the extent it does not exceed an amount calculated in accordance with the provisions of sub-sections (2) and (3) of section 4 of that Act ;

(iii) any other gratuity received by an employee on his retirement or on his becoming incapacitated prior to such retirement or on termination of his employment, or any gratuity received by his widow, children or dependants on his death, to the extent it does not, in either case, exceed one-half month's salary for each year of completed service calculated on the basis of the average salary for the ten months immediately preceding the month in which any such event occurs, subject to such limit as the Central Government may, by notification in the Official Gazette, specify in this behalf having regard to the limit applicable in this behalf to the employees of that Government :

Provided that where any gratuities referred to in this clause are received by an employee from more than one employer in the same previous year, the aggregate amount exempt from income-tax under this clause shall not exceed the limit so specified :

Provided further that where any such gratuity or gratuities was or were received in any one or more earlier previous years also and the whole or any part of the amount of such gratuity or gratuities was not included in the total income of the assessee of such previous year or years, the amount exempt from income-tax under this clause shall not exceed the limit so specified as reduced by the amount or, as the case may be, the aggregate amount not included in the total income of any such previous year or years.

[\* \* \*] Explanation.-- In this clause, and in clause (10AA)], "salary" shall have the meaning assigned to it in clause (h) of rule 2 of Part A of the Fourth Schedule."

5. As per sub-clause (i), entire amount of the gratuity is exempt from tax in respect of the Central Government employees or members of the Civil Services of the Unions or Advance Services or Civil Services of the state or employees of the local authorities. So far as sub-clause

(ii) to sec.10(10) is concerned, it refers to the gratuity paid under the Payment of Gratuity Act, 1972. It is necessary to note here that Payment of Gratuity Act, 1972, there is a ceiling on the salary and hence, in clause (ii) also the exemption is restricted to the extent of an amount of the gratuity calculated under sub-sections (ii) & (iii) of sec.4 of the said Act. The Payment of Gratuity Act is applicable to the employees with a ceiling on the salary and maximum amount payable towards gratuity is also restricted. The gratuity may be paid to an employee on the retirement on superannuation or on the termination of employment or on a death to his legal heirs. The Ld. Counsel placed his reliance on the Circular No.576 dated 21.8.1990 to support his contention that the said circular exempts the amount of gratuity. With due respect, we are not agreeing with the plea that the amount of gratuity received on the death of the deceased assessee is covered by that Circular. As per the language used by the CBDT, it is very clear that when any compensation or lump sum ex-gratia payment is made to the widow and other legal heirs of the employee who die while in active service, will not be taxable and said Circular is issued, more particularly, considering the charging provisions of the Act i.e. Sec.4 of the Act and not on interpretation of sub-cl.(iii) to sec. 10(10) of the Act.

5. So far as Sub.-cl. (iii) to sec.10(10), the discretion is left to the Central Government to prescribe the upper limit of amount to be exempted, by the notification in the official gazette. The Government has issued a notification No.10772 dated 28.1.1999 (F. No.200/77/97-ITA-I). The said notification reads as under:-

"In exercise of the powers conferred by sub-clause (iii) of clause (10) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government, having regard to the maximum amount of any gratuity payable to its employees, hereby specifies three lakhs and fifty thousand rupees as the limit for the purposes of the said sub-clause in relation to the employees who retire or become incapacitated prior to such retirement or die on or after the 24th September, 1997, or whose employment is terminated on or after the said date."

6. Admittedly, the gratuity declared in the hands of the deceased assessee is not any 'gratuitous' payment or compensation but

same is towards the services rendered by the deceased assessee to his company in the capacity as a full time working Director. The above referred notification is directly on the relevant issue. Moreover, the scope of sec.10(10) has been explained by the Hon'ble High Court of Bombay in the case of N.J. Puvri (supra). The reliance placed by the Ld. Counsel in respect of the leave encashment having no bearing on the issue of gratuity and hence, not helpful to the present assessee. We, therefore, hold that the amount of gratuity received on the death of the deceased assessee is covered by sub-cl. (iii) of sec.10(10) of the Act and in view of the Notification dated 28.1.1999, the sum of Rs. 3,50,000/- is exempt from tax as rightly held by the A.O. We, therefore, reverse the order of the Ld. CIT (A) on this issue and restore that of the A.O. and respective ground of the revenue is allowed.

7. The next issue is whether the amount of the bonus is exempt and covered by Circular No.573 of the Act.

8. We have heard the parties. In this case, the Ld. CIT (A) called the remand report of the A.O. and A.O. accepted it is covered by the said Circular. The Ld. CIT (A) has made the categorical observation in Para no.17 of his order, hence we find no merit in the ground taken by the revenue. Accordingly, ground no.2 is dismissed.”

5. In view of the above order of the Tribunal, taking a consistent view, we dismiss this ground of the assessee.

6. With regard to leave encashment, the argument of the Id. AR is that Circular No.309 dated 3.7.1981 and a clarification letter No.35/1/65-IT(B) dated 5.11.1965 is to be interpreted in favour of the assessee and the entire leave encashment in the hands of the assessee has to be exempted. We find that there is a Notification No.SO 588(E) dated 31.5.2002 wherein a specific exemption limit in relation to employees who retire whether on superannuation or otherwise after 1.4.1988 is allowable at Rs.3 lakhs. As per the wordings used in section 10(10AA)(ii) of the Act, it is clear that in respect of employees other than the Central Govt. and State Govt., the encashment of unutilized leave at the credit of the employee at the time of

retirement or otherwise is to be governed as per the limit laid down in the Gazette Notification dated 31.5.2002 which is the maximum amount of Rs.3 lakhs. The Circular is not clear about the entire leave encashment of the employee as exempt. Hence Rs.3 lakhs out of Rs.10,44,888 is to be allowed as exempt and balance of Rs.7,44,888 is to be taxed. Accordingly, this ground of the assessee is dismissed.

7. In the result, the appeal by the assessee is dismissed.

Pronounced in the open court on this 18<sup>th</sup> day of November, 2021.

Sd/-  
( N V VASUDEVAN )  
VICE PRESIDENT

Sd/-  
( CHANDRA POOJARI )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 18<sup>th</sup> November, 2021.

*/Desai S Murthy/*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.