

ITA No. 176/GAU/2010
Assessment Year: 2004-2005
&
C.O. No. 01/GAU/2011
(in ITA No. 176/GAU/2010)
Assessment Year:2004-2005
Tamchi Kujuk

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-GUWAHATI 'e-COURT', KOLKATA
[Virtual Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ) &
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 176/GAU/2010
Assessment Year: 2004-2005**

Income Tax Officer,..... Appellant
Ward-North Lakhimpur,
Borah Complex, D.K. Road,
Dist. North Lakhimpur, Assam

-Vs.-

Tamchi Kujuk,..... Respondent
S/o. Tamchi Togung,
Chandan Nagar, Itanagar,
Arunachal Pradesh-791111
[PAN: ALZPK9736B]

&

C.O. No. 01/GAU/2011
(in I.T.A. No. 176/GAU/2010)
Assessment Year: 2004-2005

Tamchi Kujuk,..... Cross Objector
S/o. Tamchi Togung,
Chandan Nagar, Itanagar,
Arunachal Pradesh-791111
[PAN: ALZPK9736B]

-Vs.-

Income Tax Officer,..... Respondent
Ward-North Lakhimpur,
Borah Complex, D.K. Road,
Dist. North Lakhimpur, Assam

Appearances by:

Shri N.T. Sherpa, JCIT, appeared on behalf of the Revenue
N o n e, appeared on behalf of the assessee

Date of concluding the hearing : September 29, 2022

Date of pronouncing the order : November 03, 2022

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The Revenue is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals), Guwahati dated 29.10.2010 passed for Assessment Year 2004-05. On receipt of the notice in the Revenue's appeal, the assessee has filed Cross Objection bearing No.01/GAU/2011.

2. Alongwith Form No. 36, Revenue has filed statement of facts and thereafter raised only one ground of appeal, which reads as under:-

"The CIT(A) has erred in holding that the capital carried forward and the introduction of capital as income exempt u/s 10(26) of the Income Tax Act, 1961, while holding that due opportunity was provided to the assessee by the AO before passing the order u/s 144 of the Income Tax Act, 1961. The CIT(A) failed to appreciate the fact that the onus to prove otherwise by the AO does not hold good in the instant case since the assessee had failed to discharge his onus properly".

3. This appeal was presented before the Tribunal on 30.12.2010. Thereafter it was taken on the Board on 16.12.2015. It has been adjourned from time to time. The ITAT has commenced hearing of appeals of Guwahati Benches through Virtual Mode from Kolkata on regular basis. Notice of hearing was sent to the assessee, which returned with a postal remark as "left". Thereafter notice was sent through the Department. The Inspector has narrated his experience vide his letter dated 08.07.2019 when he went to serve the notice upon the assessee. We have perused this report and we are of the view that the assessee should have behaved more responsible. His conduct towards the Department is hostile and contemptuous in nature. He behaved arrogantly and rather threatened the

Inspector, when this fact was brought to the notice of Id. Counsel for the assessee on the earlier date of hearing. Then, she contended that unconditional apology has been tendered by the assessee and that was accepted by the Bench on 16.06.2022. The hearing was adjourned to 18.08.2022. Id. Counsel for the assessee again sought adjournment but we did not grant adjournment because it is an appeal of 2010, already twelve years have expired. We heard the appeal *ex-parte* with the assistance of Id. D.R. and proceed to decided on merits.

4. Before taking up the solitary grievance of the Revenue, we would like to take note of certain facts. The assessee has filed his return of income on 08.10.2004 showing total income at Rs.6,34,537/- but claimed it exempt under section 10(26) of the Income Tax Act. An assessment order was passed under section 143(3) on 31.03.2006 rejecting the claim of exemption in respect of income arose to the assessee from execution of contract works at Tripura. This order was set aside by the Id. Commissioner by exercising powers under section 263 vide his order dated 31.03.2009. In pursuance of this 263 order, fresh assessment order has been passed on 31.12.2009 under section 143(3) read with section 263. The computation of income in this assessment order reads as under:-

“Therefore, based on the above discussions the income is computed as under:-

Contract income from Arunachal Pradesh: NIL

Income from Tripura: Rs.48,62,252/- (as discussed in para 8)

Add: As discussed in para 7 : Rs.1,81,07,565/-

Less Depreciation: Rs.10,81,874/- (as discussed in para 10)

Total Income : Rs.2,18,87,943/-

Computation of Tax:

Total income : Rs.2,18,87,943/-

Tax on Income : Rs.65,66,382/-

Add.: Surcharge Rs.6,56,638/-

Add.: Interest u/s 234A: Rs.45,30,803/-

Total tax payable : Rs.1,17,53,823/-.

Demand notice u/s 156 issued. Penalty u/s 271(1)(c) initiated separately. Copy of order to the assessee.

Sd/- 30.12.2009

(Mrinal K. Das)

*Assistant Commissioner of Income Tax,
Cir.-Tezpur*

5. Dissatisfied with the above computation of income, the assessee went in appeal before the ld. CIT(Appeals). The ld. CIT(Appeals) held that the assessee is entitled for exemption under section 10(26) of the Income Tax Act and hence his income is to be taken at 'NIL'. The ld. 1st Appellate Authority has noticed each ground of appeal taken by the assessee and the arguments advanced by the ld. Representative of the assessee, thereafter recorded the following finding:-

"5. I have considered the submission of the appellant. With regard to the second ground of appeal, the AO in the order observed that the appellant filed return of income of Rs. 6,34,537/- in respect of A.Y. 2004-05, which was claimed exempt u/s 10(26). Since the return filed by the appellant was more than Rs. 5 lakhs, therefore, as per jurisdictional order of Addl. CIT, Range-Tezpur, regular jurisdiction over the appellant lies under ACIT Circle-Tezpur as per section 120 of the J.T. Act. Moreover, the appellant had not questioned the jurisdiction of the AO during the course of assessment proceedings initiated following the order u/s 263. In view of the above, the contention of the appellant is found to be without any' merit. Appeal fails on this ground.

6. With regard to the third ground of appeal, hearings were fixed by the AO on 30.07.2009 and 25-08-2009. The appellant requested for keeping assessment proceedings in abeyance till disposal of appeal filed before the ITAT against the order passed u/s 263. As matter was time barring, therefore, the assessment was completed u/s 144 to the best of the judgment of the AO on the basis of materials on record. Considering

the above it is observed that due opportunity was provided to the appellant by the AO before passing the order u/s 144. Appeal fails on this ground.

7. *With regard to the fourth, fifth and sixth grounds of appeal, it is observed that the appellant is a member of Schedule Tribe residing in the state of Arunachal Pradesh. The income of the appellant during the relevant previous year accrued from the states of Arunachal Pradesh and Tripura which are areas specified in section 10(26) of the I T. Act. The Full Bench of Gauhati High Court in its judgment dated 10/12/2009 on the same issue of income exempt from income-tax u/s 10(26) in VVP(C) No. 727/2009 in the case of Pradeep Kumar Teye and others vs. Union of India and others held:*

"the benefit provided under Sub-section (26) available only to the members of the Scheduled Tribes "residing in any areas" specified in the said section. In other words, the members of the Scheduled Tribes residing in other parts of the country, other than the one specified under Section 10 Sub-section (26) are not entitled to the benefit of Section 10 Sub-section (26)..... The crucial expression "residing in any area specified" occurring under Sec. 10(26), in our view cannot be given a narrow and restricted meaning to imply that the members of a Scheduled Tribe migrating from their place of origin, which happens to fall in one of the areas specified in the said Sub-section, to another area although once again failing within the areas specified in the Sub-section, would not get the benefit of the exemption under Section 10(26). If a literal meaning is to be given to the expression "residing in any area specified", in our view, Section 10(26) is capable of producing a result that any member of a Scheduled Tribe irrespective of the fact whether such a Scheduled Tribe is a Scheduled Tribe, in relation to those territories specified in the said Sub-section or not, is entitled to the benefit of the said Sub-section. It is not the case of either the petitioners or the revenue that the Parliament, while enacting Section 10(26) intended such result. Therefore, the expression "residing in any area specified" must be interpreted in the context of the said Sub-section. The context of the Sub-section is that it is a special provision with reference to the specified areas of the country, that is, the areas comprising North East and Jammu & Kashmir of the country, which received a special treatment under the scheme of the Constitution in the various aspects of the application of the constitution. It may also be worthwhile remembering that even in the matter of reservation of seats either in the Lok Sabha or the various Legislative Assemblies, the Scheduled Tribes of the State of "Assam" are treated exclusively under Article 330(3)² and 332(1). Therefore, in

ITA No. 176/GAU/2010
Assessment Year: 2004-2005
&
C.O. No. 01/GAU/2011
(in ITA No. 176/GAU/2010)
Assessment Year:2004-2005
Tamchi Kujuk

our view, the expression "residing in any are specified", occurring under Section 10(26) is used by the Parliament synonymously with the expression "in relation to any area specified" under the said Sub-section. In our view, the expression "residing in any area-specified" is not meant to be restrictive of the benefit provided under the said Sub-section in the case of members of the Scheduled Tribes, who, otherwise, fall within the scope of the said Section, but migrating to one of the places specified in the said Sub-section but only descriptive of the limited number of Scheduled Tribes, which are residents of the areas specified under Section 10(26) of the Income-tax Act".

The appellant is a member of Schedule Tribe as defined in Article 366(25) of the Constitution residing in the state of Arunachal Pradesh. Therefore, following the decision of Hon'ble Gauhati High Court cited above, the income of the appellant accruing or arising from the state of Tripura, a specified area under Section 10 (26), would be exempt under the said section. No material is brought on record by the AO on the capital brought forward and introduction of fresh capital Rs. 1,81,07,565/- that the same has accrued from areas other than the states of Arunachal Pradesh and Tripura. The AO has not found the above capital to have accrued from areas other than the states of Arunachal Pradesh and Tripura. The above income of the appellant is, therefore, exempt u/s 10(26) of the IT Act. The appeal is allowed on these grounds.

8. *In the result appeal is partly allowed.*

Sd/-

(Niranjan Kouli)

Commissioner of Income Tax(Appeals) Guwahati"

6. The Id. D.R. was unable to point out any material as to how the issue in dispute is not covered by the Full Bench of Hon'ble Guwahati High Court in the case of Pradip Kumar Taye as referred by the Id. 1st Appellate Authority. The Id. CIT(Appeals) was of the view that income from the State of Tripura earned by the assessee would also qualify for exemption under section 10(26). Similarly the Id. CIT(Appeals) has observed that whatever may be the brought forward capital, it will be treated at par with the regular income unless it is demonstrated by the Revenue that such income has been sourced outside of the specified area.

7. It is pertinent to observe that in the assessment order, the Id. Assessing Officer has pointed out only two items, i.e. income of Rs.48,62,252/- from a Project in Tripura and brought forward fresh capital introduced by the assessee. As far as the capital introduced in earlier years are concerned, the assessee has explained his position. Now the Department is unable to bring on record any material, which can demonstrate that such capital was introduced from an income earned outside of this specified area. The Id. 1st Appellate Authority has discussed both these issues in the concluding paragraph and after going through the last paragraph of the Id. CIT(Appeals)'s order, we do not find any error in it and accordingly we do not find any merit in the appeal of the Revenue.

8. Now we take the Cross Objection taken by the assessee. In the first ground of Cross Objection, the assessee has pleaded that Id. CIT(Appeals) is wrong in observing that jurisdiction of the case was with the ACIT, Circle-Tezpur. In the statement of fact appended with the C.O., the assessee has pleaded that originally the assessee has filed his return of income with Ward North Lakhimpur. His assessment was also passed by ITO, Ward-North Lakhimpur only. The case was subsequently transferred to ACIT, Circle Tezpur and the reason for such transfer was that income of the assessee exceeded Rs.500,000/-. He submitted that the last return filed by the assessee before passing of the order by Id. ACIT is for A.Y. 2007-08 in which income was declared as 'NIL'.

9. Though with the assistance of Id. D.R., we have gone through the record carefully. The assessee has not placed on record the Notification vide which jurisdictions are being given. What we could gather from the record available before us is that there was certain classification of cases and for better management of the assessments, it was decided that cases

of the assessee where income exceeded Rs.5,00,000/- will be assessed by ACIT, Ward-Tezpur and below this monetary limit would remain with concerned ITO at Lakhimpur. The assessee is trying to demonstrate that last return available in that Notification is to be construed filed later on. He is relying upon the returned income filed in A.Y. 2007-08, which was NIL income. To our mind, it is misleading argument. The return of income ought to be considered either A.Y. 2003-04 or 2005-06, not A.Y. 2007-08. Hence, the jurisdiction over the assessee has rightly been taken by ACIT, Tezpur Circle. This finding is given on the basis of limited incomplete information and accordingly this ground of appeal is rejected.

10. In the second ground, the assessee has challenged that ld. CIT(Appeals) is wrong in observing that due opportunity of hearing was given to the assessee. Since we have upheld the order of the ld. CIT(Appeals), it is just an academic issue and we do not wish to go into all these details. This ground is rejected.

11. In the result, the appeal as well as Cross Objection both are dismissed.

Order pronounced in the open Court on November 03, 2022.

Sd/- (Rajesh Kumar) Accountant Member Kolkata, the 3rd day of November, 2022	Sd/- (Rajpal Yadav) Vice-President)
--	--

Copies to : (1) **Income Tax Officer,**
Ward-North Lakhimpur,
Borah Complex, D.K. Road,
Dist. North Lakhimpur, Assam

(2) **Tamchi Kujuk,**
S/o. Tamchi Togung,
Chandan Nagar, Itanagar, Arunachal Pradesh-791111

ITA No. 176/GAU/2010
Assessment Year: 2004-2005
&
C.O. No. 01/GAU/2011
(in ITA No. 176/GAU/2010)
Assessment Year:2004-2005
Tamchi Kujuk

- (3) *Commissioner of Income Tax (Appeals). Guwahati;*
- (4) *Commissioner of Income Tax- ,*
- (5) *The Departmental Representative*
- (6) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.