

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 404/JP/2022
निर्धारण वर्ष/Assessment Year : 2019-20

Shri Narender Singh Yadev F-39, Suresh Marg, C Scheme Jaipur – 302 001	बनाम Vs.	The ACIT Circle-1 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAFPY 1920 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Ashok Kanodia, CA
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 14/02/2023
उदघोषणा की तारीख / Date of Pronouncement: 22 /02/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 29-09-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2019-20 wherein the assessee has raised the following grounds of appeal.

“1. Under the facts and circumstances of the case ld. CIT (A) was not justified while confirming the order u/s 154 on total income of Rs 3893730/- by raising demand of Rs 519136/-

2. Under the facts and circumstances of the case Id. CIT (A) was not justified while rejecting the claim u/s 10(10AA) amounting to Rs. 1423591.00 out of Rs 1723591.00 allowing only Rs 300000.00 which is earned leave encashment on retirement. Without assigning specific reasons

3. Under the facts and circumstances of the case Id. CIT (A) was not justified while treating the employer as non-government instead of government organization without ascertaining true nature of employer.’’

2.1 The only dispute in this case relates to rejection of claim u/s 10(10AA) of the Act amounting to Rs.14,23,591/- on account of earned leave encashment on retirement by holding that the employer of the assessee is a Non-Govt. Organisation. In this regard, the Id. AR of the assessee reiterated the same arguments as were raised by him before the Id. CIT(A). It is submitted that the assessee was an employee of Malviya National Institute of Technology, Jaipur which is a Govt. Institution. The Id. AR further submitted that assessee was retired on superannuation and raised claim for seeking pension u/s 10(10AA)(ii) of the Act on account of leave encashment of salary. However, the Id. CIT(A) while relying upon the decision of Hon’ble Delhi High Court in the case of Kamal Kumar Kalia vs Union of India [2019] 111 taxmann.com 409 denied the exemption to the assessee by holding that since the assessee is not a Govt. employee, therefore, he is not entitled to get full exemption on leave encashment u/s 10(10AA)(ii) of the Act. He further held that employees covered u/s 10(10AA)(ii)

are granted exemption only in respect of the amount of leave salary payable for a period of 10 months and since the limit has been notified upto Rs.3.00 lacs, therefore, the ld. CIT(A) upheld the order of the AO granting exemption of Rs.3.00 lacs and dismissed the appeal of the assessee. The relevant observation of the ld. CIT(A) at para 5 of his order is reproduced as under:-

5. I have perused the order u/s 154 and the submissions of the appellant. The issue in question is the taxability of encashment of leave salary on superannuation in view of the provisions of sec. 10(10AA) of the I.T. Act. In this case, the AO(CPC) has allowed exemption of Rs.3,00,000/- to the appellant on account of leave encashment of salary in view of the provisions of sec. 10(10AA)(ii) of the I.T. Act. The appellant claims that the entire amount of encashment of leave salary is exempt in his case. The moot question here is whether the appellant is an employee of the Central Government or a State Government, in which case provisions of 10(10AA)(i) will be applicable to him. If not, then the case of the appellant will be covered u/s 10(10AA)(ii) of the I.T. Act. The appellant is an employee of Malaviya National Institute of Technology, Jaipur which is not Government. It has been held by the Hon'ble High Court of Delhi in the case of Kamal Kumar Kalia vs. Union of India 268 taxmann 398(Del) that employees of public sector undertakings and nationalized banks cannot be treated as Govt. employees and are therefore not entitled to get full exemption on leave encashment upon retirement u/s 10(10AA)(i). The Hon'ble Delhi High Court has also held that employees covered under sec 10(10AA)(ii) are granted exemption only in respect of the amount of leave salary payable for a period of 10 months, subject to the limit prescribed and that there is no discrimination vis-à-vis employees of the Central and State Government. The limit has been notified to be Rs.3,00,000/-. That being so, the action of the AO CPC to grant exemption of Rs.3,00,000/- to the appellant on encashment of earned leave upon

superannuation as per the provisions of Sec10(10AA)(ii); is upheld. Appeal is dismissed.”

2.2 During the course of hearing, the ld. AR of the assessee prayed that the ld. CIT(A) has erred in dismissing the appeal of the assessee for which the ld. AR of the assessee forwarded the brief submission as under:-

“The main issue in this case relates disallowance u/s 10(10AA) amounting to Rs. 1423591.00 out of Rs 1723591.00 allowing only Rs 300000.00 which is earned leave encashment on retirement on the presumption that employer is non govt. It has been stated by ld. CIT(A) that employee of public sector undertaking and nationalized banks are not govt employee. Therefore he is not entitled for full exemption but employer is neither public sector undertaking nor nationalized bank but he is purely govt employee which is evident from the fact that it is college for which notification is there (P.B NO 10-21) read with office order (P.B NO 21A) therefore this is govt organization and is eligible for deduction 1723591/-“

2.3 On the other hand, the ld.DR supported the order of the ld. CIT(A)

2.4 After hearing both the parties at length and also perusing the materials placed on record as well as the orders of the Revenue Authorities, we find from the records that the assessee had been working in Malviya National Institute of Technology, Jaipur (Raj) and as per Govt. Order/ Gazette Notification of Govt. of India issued on 6th June 2007 (PB 10-12) and Office order dated 11-10-2022 (PB 21A), it is demonstrated that Malviya National Institute of Technology, Jaipur (Raj) is a Govt. Organisation. However, nothing rebuttal has been filed by the

Revenue Authority and even no fault has been pointed out by the Revenue Authority in the said Gazette Notification and Office Order relied upon by the Id. AR of the assessee. Therefore, we have no option except to rely upon un-rebutted public documents in the shape of Gazette Notification and Office Order for reaching the conclusion that Malviya National Institute of Technology, Jaipur (Raj) is a Govt. Organisation. Apart from above, we have also noticed that the Id. CIT(A) while rejecting the claim of the assessee has solely relied upon the decision of Hon'ble Delhi High Court in the case of Kamal Kumar Kalia vs Union of India (supra). However, the para materia contained in the said judgement of the facts are altogether different from the facts of the present case as in the case of Kamal Kumar Kalia vs Union of India (suupra). It was an undisputed fact that the petitioner in that case was employee of public sector undertaking and Natonalised Bank. Thus, it was held by the Hon'ble Court that public sector undertaking and nationalized banks cannot be treated as Govt. Employee. However, the facts in the present case of the assessee are altogether different. The Id. AR of the assessee has placed on record the Govt. Gazette Notification and Office Order to demonstrate that Malviya National Institute of Technology, Jaipur (Raj) is a Govt. Organisation. Thus in our view, the findings of the Id. CIT(A) are based on incorrect assumption of facts. Since as per the documents, Malviya National Institute of Technology, Jaipur (Raj) is a Govt. Institution, therefore, the assessee

being an employee of Malviya National Institute of Technology, Jaipur (Raj) is entitled for full exemption of earned leave encashment on retirement. In view of the above deliberation, the appeal of the assessee is allowed.

3.0 In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 22 /02/2023.

Sd/-

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 22/02/2023

*Mishra

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

1. The Appellant- Shri Narender Singh Yadav, Jaipur
2. प्रत्यर्थी / The Respondent- The ACIT, Circle -1, Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 404/JP/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar

7 ITA NO. 404/JP/2022
NARENDER SINGH YADAV VS ACIT, CIRCLE-1, JAIPUR