

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 330/Srt/2022 (Assessment Year 2019-20)
(Physical hearing)

Himanshu Natvarlal Mehta, 44, Chhapra Road, Shakti Nagar, Navsari-396445. PAN No. AAQPM 4972 K	Vs.	I.T.O., Ward-2, Navsari.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Suresh K. Kabra, AR
Department represented by	Shri Vinod Kumar, Sr. DR
Date of hearing	19/04/2023
Date of pronouncement	19/04/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 29/09/2022 for the Assessment Year (AY) 2019-20. The assessee has raised following grounds of appeal:

- “1. The Id. CIT(A) erred in passing the order without giving reasonable opportunity to the appellant.
2. On the facts/the circumstances of the case and law, the Id. CIT(A) erred in confirming the addition of Rs. 4,76,980/- of Section 10(10AA) for encashment of leave being the debatable issue due to the admission of writ petition in Delhi High Court in case of Kamal Kumar Kalia & Ors. Vs Union of India & Ors. W.P.(C) 11846/2019.
3. The Id. CIT(A) has not made any direction in his order regarding acceptance/rejection of form No. 8 filed by me being the matter pending and the facts are similar to the case stated in point no. 2 above.

4. *The appellant craves leave to amend, alter or delete any of the above grounds of appeals."*

2. Rival submissions of both the parties have been heard and record perused. At the outset of hearing, the learned Authorised Representative (Id. AR) of the assessee submits that the assessee is a retired employee of Bank of Baroda which is a public sector undertaking of Government of India. The assessee is its computation of income claim exemption under Section 10(10AA) of the Income Tax Act, 1961 (in short, the Act) of Rs. 7,76,984/- on account of leave encashment on his superannuation/ retirement. The lower authorities restricted the claim of exemption under section 10(10AA) to the extent of Rs. 3.00 lacs, thereby disallowed Rs. 4,76,984/-, and added to the income of assessee. The Id. AR of the assessee submits that in a recently the Hon'ble Finance Minister while presenting Budget for financial year 2023-14, in the Parliament has declared that limit of Rs. 3.00 lacs for tax exemption on leave encashment on retirement of non-government salaried employee was last fixed in the year 2002, when the highest basis paid in the government was Rs. 33,000/- per month. In line with the increase in government employees' salary, the Hon'ble Finance Minister proposed to increase this limit to Rs. 25.00 lacs. However, till now, no such notification is issued either by the Government of India or by the Central Board of Direct Taxes.

3. The Id. AR of the assessee further submits that the Hon'ble Delhi High Court in case of Kamal Kishore Kalia & Ors. Vs Union of India & Ors. in Writ Petition (Civil) No. 11846/2019 has admitted a similar question of law which is directly and substantially involved in the grounds of appeal raised by the assessee. The Hon'ble Delhi High Court vide order dated 05/04/2020 has admitted such question of law and directed the Government of India/Union of India to file their reply on such question. The Id. AR of the assessee submits that his appeal may be restored to the file of Assessing Officer with the direction to follow the mandate of decision of Hon'ble Delhi High Court in Kamal Kishore Kaila & Ors. Vs Union of India & Ors. (supra) as and when order is passed in the said Writ Petition. The assessee has already filed undertaking in the Form No.8 declaration under Section 158A of the Act, undertaking that he will abide by the final decision on question of law referred by the Hon'ble Delhi High Court.
4. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue submits that for seeking relief under Section 158A of the Act, there will be parity in the question of law and facts and the facts in case of assessee may be at variance. The Id. Sr. DR for the revenue on merit, supported the order of Id. CIT(A).
5. I have considered the submissions of both the parties and find that the assessee in the revised return of income, the assessee claimed deduction

under Section 10(10AA) of the Act of Rs. 7,76,984/- on account of leave encashment on his superannuation from Bank of Baroda. The lower authorities restricted the claim to the extent of RS. 3.00 lacs as prescribed limit of exemption under Section 10(10AA) of the Act. Now before me, the Id. AR of the assessee filed his undertaking in Form No. 8 and submitted that similar issue, the Hon'ble Delhi High Court has already admitted a question of law and he will abide by the outcome of such decision in Kamal Kishore Kalia & Ors. Vs Union of India & Ors. (supra). Considering the submission of Id. AR of the assessee, I find merit in the limited submission of the Id. AR of the assessee, therefore, the issue/grounds of appeal raised by the assessee is restored back to the file of Assessing Officer to grant give effect of this order as per the order of Delhi High Court in Kamal Kishore Kalia & Ors Vs Union of India & Ors. (supra) and allow relief to the assessee. With this limited direction, the grounds of appeal raised by assessee is allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purpose.

Order announced in open court on 19th April 2023 at the time of hearing.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 19/04/2023
**Ranjan*

Copy to:

1. Assessee
2. Revenue / assessing officer
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat