

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 436/Kol/2023
Assessment Year: 2012-13

Shri Bhagirath Prasad Garg C/o Rajdhani Motors 10, National Highway Gangtok - 737101 [PAN : AUBPG1708L]	Vs	Income Tax Officer, Ward - 3(1), Gangtok
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri S.K. Pransukha, FCA & Shri H.V. Bharadwaj, FCA
Revenue by :	Shri Nicholas Murmu, Addl. CIT D/R

सुनवाई की तारीख/Date of Hearing : 10/07/2023
घोषणा की तारीख /Date of Pronouncement: 24/07/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter the "Id. CIT(A)") dated 24/03/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act'), for Assessment Year 2012-13.

2. The sole grievance of the assessee is that it is eligible for exemption u/s 10(26AAA) of the Act. At the outset, the Id. Counsel for the assessee submitted that assessee who is not a Sikkimese individual but is residing in Sikkim since prior to 1975 and, therefore, as per the recent judgment of the Hon'ble Supreme Court in the case of *Association of Old Settlers of Sikkim and Ors. vs. UOI in W.P. (C) No. 59 of 2013, judgment dt. 13.01.2023*, as well as the *Miscellaneous Application*, for the said order dt. 08/02/2023, wherein the Hon'ble Court has held that "Till such amendment is made by the Parliament to the Explanation to Section

10(26AAA) of I.T. Act, 1961, any individual whose name does not appear in the Register of Sikkim Subjects but it is established that such individual was domiciled in Sikkim on or before 26th April, 1975, shall be entitled to the benefit of exemption.”

3. The Id. D/R on the other hand, though supported the orders of the lower authorities, stated that the matter may be remitted back to the file of the lower authorities for necessary verification.

4. We have heard rival contentions and perused the material placed before us. We notice that the assessee is engaged in trading business. During the FY 2011-12, it deposited total sum of Rs.26,60,661/- in the savings bank account held with Central Bank of India, Gangtok Branch. Based on this information, notice u/s 148 of the Act was issued. During the course of assessment proceedings, the assessee claimed exemption u/s 10(26AAA) of the Act. However, at that point of time, since the matter was *sub judice* before the Hon'ble Supreme Court, the Id. Assessing Officer added the total amount of deposit in the bank, as income of the assessee. Appeal before the Id. CIT(A) did not bring any relief.

5. Before us, the Id. Counsel for the assessee has referred to the residential certificate issued by the office of District Collector, East District Gangtok, bearing SI No. RC/E/LRDMD/18/001318, dt. 07/09/2018, which certifies that the assessee, namely, Shri Bhagirath Prasad Garg son of Shri Tara Chand Garg, has been found to be

residing within the state of Sikkim on or before 26th April, 1975 and has been continuously residing in the State of Sikkim since then. Further our attention was drawn to the judgment of the Hon'ble Supreme Court in the case of *Association of Old Settlers of Sikkim and Ors. vs. UOI (supra)*, wherein Hon'ble Court disposed off the writ petition, holding as follows:-

"79. In the result, the writ petitions are disposed of in the following terms:

i) That the benefit of income-tax exemption presently is restricted only to those Sikkimese who fall within the three clauses of the Explanation to Section 10(26AAA) of the I.T. Act, 1961, or those persons domiciled in Sikkim, or are Sikkimese as covered under the 1961 Regulation.

ii) In terms of the Sikkim (Citizenship) Order, 1975 as amended by the Sikkim (Citizenship) Amendment Order, 1989, issued by the Government of India any person who was a Sikkim Subject under the 1961 Regulation was to be deemed to be a citizen of India w.e.f. 26th April, 1975. Conversely, it is held that all citizens of India, having a domicile in Sikkim on the day it merged with India i.e. 26th April, 1975 must be covered under the Explanation in order to avail the benefit of the exemption under Section 10(26AAA) of the I.T. Act, 1961.

iii) The Union of India shall make an amendment to Explanation to Section 10 (26AAA) of I.T. Act, 1961, so as to suitably include a clause to extend the exemption from payment of income tax to all Indian citizens domiciled in Sikkim on or before 26th April, 1975. The reason for such a direction is to save the explanation from unconstitutionality and to ensure parity in the facts and circumstances of the case.

iv) Till such amendment is made by the Parliament to the Explanation to Section 10 (26AAA) of I.T. Act, 1961, any individual whose name does not appear in the Register of Sikkim Subjects but it is established that such individual was domiciled in Sikkim on or before 26th April, 1975, shall be entitled to the benefit of exemption.

This direction is being issued in exercise of powers under Article 142 of the Constitution so as to eliminate discrimination and disparity in respect of the aforesaid category of Sikkimese, who subsequently have

become citizens of India w.e.f. 26th April, 1975 and to save the Explanation from being rendered unconstitutional vis-à-vis such individuals who form a small percentage of Sikkimese.

v) Proviso to Section 10 (26AAA), insofar as it excludes from the exempted category, "a Sikkimese woman who marries a non-Sikkimese man after 1st April, 2008" is hereby struck down as being ultra vires Articles 14, 15 and 21 of the Constitution of India."

6. Subsequently, a Miscellaneous Application was filed against the said order regarding the observations made at page 115 of the judgment wherein it was stated that those individuals domiciled in Sikkim up to 26th April, 1975, will be entitled to exemption under the said provision from the current financial year i.e., 1st April, 2022 onwards. The Hon'ble Supreme Court on going through the said Miscellaneous Application, rectified the order dt. 13/01/2023 and the words "*from the current financial year i.e., 1st April, 2022 onwards*" were deleted. As a result of the same, Hon'ble Supreme Court has held that any individual who is domiciled in Sikkim before the year 1975, shall be entitled to the benefit u/s 10(26AAA) of the Act, even if his/her name does not appear in the Register of Sikkim.

7. Respectfully following the same and examining the facts of the instant case, we notice that the assessee though is not a Sikkimese and his name is not appearing in the Register of Sikkim but as per the residential certificate issued by the District Collector, East District, Gangtok, he is found to be domiciled in the state of Sikkim on or before 26th April, 1975 and, therefore, assessee is well covered by the

decision of the Hon'ble Supreme Court and thus, is entitled to exemption u/s 10(26AAA) of the Act for the income earned from carrying out the activity in the State of Sikkim.

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

Order pronounced in the Court on 24th July, 2023 at Kolkata.

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 24/07/2023

SC SpP

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata