

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 208/Asr/2023
Assessment Year: 2018-19**

Income Tax Officer, Ward-2(1), Amritsar. (Appellant)	Vs.	Sh. Kulwant Lal Sharma, 17-D, Rani Ka Bagh, Amritsar. [PAN: AKAPS8989E] (Respondent)
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Appellant by	Smt. Ratinder Kaur, Sr. DR.
Respondent by	None (Written Submission)

Date of Hearing	29.08.2023
Date of Pronouncement	13.09.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal was filed by the revenue against the order of the Commissioner of Income Tax (Appeals), NFAC, Delhi, [in brevity the CIT(A)]order passed u/s 250 of the Income Tax Act 1961 (in brevity the Act) for

A.Y. 2018-19. The impugned order was emanated from the order of CPC Bengaluru, order passed u/s 154 of the Act.

2. The revenue has taken the following grounds:

“1. Whether on the facts and the circumstances of the case and inlaw, the Id. CIT(A) was correct in deleting the addition of Rs. 2,64,502/- made by the Assessing Officer (AO) on account of disallowance of leave encashment claimed as exempt income u/s 10(10AA) of the Income Tax Act, 1961 without appreciating the fact that the assessee individual is a salaried person employed with Punjab State Power Corporation Ltd., which is a State Government Undertaking but not State Government.

2. Whether on the facts and the circumstances of the case and inlaw, the Id. CIT(A) was justified in deleting addition of Rs. 2,64,502/- by treating the employee of the State Government Undertaking as employee of State Government, whereas the Hon'ble ITAT, Pune Bench, Pune confirmed the addition made on the same issue vide its order in ITA No. 887/PUN/2022 dt. 11.04.2023 in the case of Shivaram Gopal vs. ITO National e-Assessment Centre, Delhi, relying on the decision of the Hon Tile Supreme Court in the case of Indian Institute of Science vs. DCIT, 446 ITR 418 (SC) holding that

“...Though the State government Undertaking may be considered as State instrumentally within the definition of article 12 of the Constitution of India, the same can not be treated as Central or State Government, consequentially employees of such undertakings cannot be treated as a Central/State Government employee...”.

3. Whether on the facts and the circumstances of the case and in law, the Id. CIT(A) was justified in deleting the addition of Rs. 2,64,502/- whereas the Hon’ble Supreme Court has affirmed the decision of the Hon’ble Karnatake High Court in the case of Indian Institute of Science vs. DCIT, 140 taxmann.com 661 (Kar.).”

3. Brief fact of the case is that the assessee is an employee of Punjab Power Corporation Ltd. which is State Government Undertaking but not State Government. The assessee claimed exemption u/s 10(10AA) amount to Rs.2,64,502/- on account of leave encashment. The assessee claimed and filed the return accordingly. The claim was rejected, and entire amount was added back with the total income. The assessee submitted rectification u/s 154 against the intimation u/s 143(1). But the rectification was rejected. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) considering the submission of the

assessee, allowed the assessee's claim. Being aggrieved the revenue filed an appeal before us.

4. When the appeal was called for hearing, none was present on behalf of the assessee. But the assessee filed a written submission and mentioned that income of the assessee was Rs.17,47,331/- and the ld. CIT(A) granted the relief amounting to Rs.2,64,502/-. So, the tax effect is being less than 50 lacs. The ld. AR mentioned in written submission that by invoking the **CBDT Circular No. 17/2019** dated **08.08.2019** the total tax effect is below the 50 lacs before the ITAT. So, the appeal of the revenue is not entertained.

5. The ld. DR vehemently argued and mentioned that the issue is squarely covered by the order of the Hon'ble Supreme Court in the case of **Indian Institute of Science Vs. DCIT (2022) 141 Taxmann.com 354 (SC)** related to the claim of deduction u/s 10(10AA) for the undertaking government employee which are not treated as State Government. But the ld. DR remained silent about the CBDT Circular No.17/2019 as mentioned above.

6. We heard the rival submission and considered the documents available in the record. After perusal of the record, we find that the total tax effect for the assessee is less than 50 lacs which amount to Rs.3,51,202/-. So, the Circular is squarely

effective on the appeal of the assessee. The issue discussed by the Id. DR is not at all applicable as because it is already under the below tax effect. We consider the above mentioned CBDT circular. The appeal of the revenue is dismissed due to low tax affect.

7. In the result, the appeal of the revenue bearing **ITA No. 208/Asr/2023** is dismissed.

Order pronounced in the open court on 13.09.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

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By Order