

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.80/Jab/2022
(ASSESSMENT YEAR- 2016- 2017)**

Devendra Mehta, 1084, Sanjivani Nagar, Jabalpur-482003 (M.P.)	vs	DCIT, Circle-2(1), Jabalpur.
(Appellant)		(Respondent)
PAN No. AFPPM8269P		

Assessee By	Shri Sughosh Bhamore & Shri Hitesh Trivedi
Revenue By	Shri Rajesh Kumar Gupta, Sr.DR
Date of hearing	13/09/2023
Date of Pronouncement	20/09/2023

ORDER

PER OM PRAKASH KANT, A.M.:

This appeal by the assessee is directed against order dated 24.05.2022 passed by Ld. Commissioner of Income Tax(Appeals)-National Faceless Appeal Centre, Delhi ["Ld.CIT(A)"] for the assessment year 2016-17, raising following grounds:

1. *"That the order passed by LD CIT (A) is unwarranted illegal & Bad in Law.*
2. *That LD CIT (A) erred in not considering the ground of appeal regarding mentioning of wrong date in the order.*

3. *That LD CIT (A) erred in not considering the fact that the revised return was furnished by the assessee.*
4. *That LD CIT(A) erred in not allowing the full deduction u/s 10(10AA)(i) of Rs 12,32,184 regarding Leave Encashment.*
5. *That LD CIT (A) erred in not considering the fact that MP Government promised in section 133 of electricity act 2003 that such terms and conditions on the transfer shall not in any way be less favourable than those which would have been applicable to them if there had been no such transfer under the transfer scheme.*
6. *That the circumstances were beyond the control of assessee, as the transfer from State Government to Government Company was made by state Government.*
7. *That LD CIT(A) erred in not following the Jurisdictional MP High Court Decision (1983) 142 ITR 13 (MP) wherein it was held that rectification u/s 154 can be made even if the assessee omits to claim some relief in return of income.*
8. *That LD CIT (A) erred in relying on Goetze India LTD Judgement because it only talks about powers of assessing officer and not about powers of appellate authorities. Reliance is placed on (2010) 4 ITR (Trib) 44 (ITAT Chennai). Goetze India LTD Distinguished, therefore First appellate authority committed error in not allowing the claim of the assessee, because according to Hon'ble Tribunal Chennai, it was well within powers of LD CIT (A) to consider the ground raised by appellant.*
9. *That it has already been held by Calcutta High Court that the tribunal has the power to entertain the claim of*

deduction not claimed before the Assessing officer by filing a revised return. (2019) 416 ITR 591 (Cal). The Goetze India LTD has already been Distinguished by Tribunals (2010) 4 ITR (Trib) 44 ITAT Chennai, By high Courts (2018) 402 ITR 400 (ker) and also by Supreme Court (2022) 443 ITR 250 (SC).

Alternative Ground (without Prejudice to above)

10. That LD CIT (A) erred in not considering the fact that for most of the service tenure i.e up to 09-04-2012 the appellant was Government employee and only during last 4 years of his service he served as the employee of a Government Company.

11. That Ld.CIT(A) erred in not allowing the prorated deduction u/s 10(10AA)(i) up to 09.04.2012 up to when the appellant was State Government employee.”

2. Briefly stated facts of the case are that during the year under consideration, the assessee superannuated from undertaking of Madhya Pradesh Government i.e. Madhya Pradesh Power Management Co.Ltd. and received Leave encashment of Rs. Rs.12,32,184/- . The assessee filed its return of income through e-mode on 10.06.2016, declaring income of Rs.25,55,890/-. The return of income was processed u/s 143(1)of the Income Tax Act, 1961 (“the Act”), wherein the total income declared by the assessee was accepted. Subsequently, the assessee had filed a rectification application on 17.10.2017 claiming that the assessee was retired

on attaining the age of superannuation on 31.01.2016 i.e. Financial Year 2015-16 and received leave encashment of Rs.12,32,184/- but claimed exemption for only Rs.3,00,000/- in the return of income, whereas the assessee being earlier employed with Government of Madhya Pradesh, was entitled for the balance amount of the leave encashment of Rs.9,32,184/- also. However, the rectification application by the assessee was rejected by the Assessing Officer (“AO”) by way of order u/s 154 of the Act dated 12.04.2017 holding that there was no mistake apparent from the record and any fresh claim could be filed by way of revised return of income and not otherwise. The AO relied on the decision of the Hon’ble Supreme Court in the case of **M/s Goetze (India) Ltd. [2006] 157 TAXMAN 1 (SC)**. The AO also rejected the claim of the assessee on merit by observing as under:-

“Moreover, on the issue of deduction of leave encashment of Rs. 3,00,000/- in return of income for A.Y 2016-17 and request for balance deduction of Rs.9,32,184/-, it is found that the assessee was an employee of the M.P Power Management Company limited, Jabalpur which is a Public Sector Undertaking under the Government of Madhya Pradesh, therefore, he is entitled for exemption of leave Encashment as per section 10(10AA(ii)) of the Income Tax, 1961 amounting upto only Rs.300000/- and same has been allowed during processing of return u/s 143(1).”

3. On further appeal, Ld.CIT(A) without deciding the issue on merit, rejected the claim at threshold holding that the assessee could not make a fresh claim otherwise than by way of a revised return of income and not under the rectification application.

4. We have heard Ld. Authorized Representatives of the parties on the issue in dispute and perused the material available on record. We find that as held by Hon'ble Supreme Court in the case of M/s Goetze (India) Ltd. (supra), the appellate authorities can entertain any fresh claim filed by the assessee during appellate proceedings and therefore, there was no bar for the Ld.CIT(A) to admit the claim and decide on merit. Accordingly, we admit the claim of the assessee for adjudication. Before us, Ld. Counsel for the assessee has relied upon the decision of the Co-ordinate Bench of the Tribunal in ***Liyakatali Chhotumiya Saiyed vs ITO in ITA No.371/Ahd./2022*** for ***Assessment Year 2019-20*** dated ***15.03.2023*** wherein the assessee was retired from Bharat Sanchar Nigam Limited which was earlier a part of the Department of Communication, Government of India. The leave encashment received by the said assessee was directed to be allowed in proportionate of the services rendered in Government Department as well as Public Sector Undertakings. The relevant findings of the

Tribunal in the case of Liyakatali Chhotumiya Saiyed vs ITO (supra) is reproduced as under:-

9. *“I have heard the rival contention of both the parties and perused the materials available on records. The fact of case are not in dispute, therefore I am not inclined to repeat the same for the sake of brevity. At the outset I note that fact of the case of appellant assessee are identical to the issue raised before coordinate bench of Mumbai ITAT in case of Shri Babul Patel vs. ITO bearing ITA No. 3261/Mum/2018 where the issue was decided in favour of the assessee by observing as under:*

9. *I have heard the rival contentions and gone through the facts and circumstances of the case. The admitted facts are that the assessee was originally appointed as Junior Engineer with Indian Post and Telegraph Department, Govt. of India w.e.f. 24.04.1980 and thereafter, in permanent capacity as Junior Engineer in the Department of Telecommunications, Govt. of India w.e.f 22.03.1983 vide order dated 22.06.1986. Subsequently, with effect from 01.10.2000 vide order dated 19.01.2004 issued by Department of Telecommunications, Ministry of Communication and IT, Govt. of India, in accordance with the provisions of Rule 37A of CCS(Pension) Rules, permanently absorbed in the Mahanagar Telephone Nigam Limited (MTNL) a PSU undertaking of Govt. of India. I am of the view that the assessee had been in service under the Department of Telecommunication, Govt. of India and*

his stamps of appointment and pay-scale were governed by the Central Govt. Rules, framed all other such employees working in Govt. of India with effect from 24.04.1980 on adhoc basis and subsequently in permanent capacity vide order dated 22.06.1986 w.e.f 22.03.1983. The assessee was absorbed in MTNL, a Govt. of India Undertaking, w.e.f 01.10.2000 vide order dated 19.01.2004. I am of the view that as per the provisions of section 10(10AA)(1) of the Act, the assessee is entitled for exemption on the amount of leave encashment of leave earned during the period before absorption in MTNL as per section 10(10AA)(1) of the Act as applicable to Central Govt. because before that date he was employee of Govt. of India that the Central Government. The amount of leave encashment in respect of leave accrued after absorption in MTNL will be governed by the exemption as per section 10(10AA)(ii) of the Act. I find that the facts are clearly in favour of assessee and for 263 days of leave as on the date of absorption was available to the assessee, which was earned and unutilized from Government service i.e. Central Government and will be governed by 10(10AA) of the Act. The balance 37 days of leave earned is from MTNL and will be governed as per the provisions of section 10(10AA)(ii) of the Act. Accordingly, I allow the appeal of the assessee and direct the AO to re-compute the exemption proportionately as directed above.

9.1 Before me, no material has been placed on record either by the Revenue to demonstrate that the decision of Tribunal as discussed above has been set aside/stayed or overruled by the Higher Judicial Authorities. Before me, no material was placed on record to point out any distinguishing feature in the facts of the case of the assessee and case mentioned above. Thus, respectfully following the order the Mumbai Tribunal as mentioned/discussed above, I hereby directed the AO to allow 100% exemption of leave encashment received on account of employment with Department of telecommunication i.e. Rs. 6,85,115/- under the provision of section 10(10AA)(1) of the Act whereas for remaining amount the AO is directed to calculate the exemption as per the provision of section 10(10AA)(ii) of the Act. Thus, the ground of appeal raised by the Assessee is hereby partly allowed.”

5. We find that facts of the instant case are exactly identical to the above case decided by the Coordinate bench of Tribunal (supra). The assessee was admittedly employed with the ‘Madhya Pradesh State Electricity Board’ which was a Government Organization, which later on converted into a company namely, Madhya Pradesh Power Management Company Ltd., Jabalpur. Therefore, respectfully following the findings of Co-ordinate Bench of the Tribunal in the case of Liyakatali Chhotumiya Saiyed vs ITO (supra), we restore the matter back to the file of AO for determination of the exemption of leave encashment entitled to the assessee under the provision of section 10(10AA)(i) and 10(10AA)(ii)

of the Act. The Ground raised by the assessee are accordingly, allowed for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 20/09/2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Amit Kumar

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Asstt. Registrar
Jabalpur Bench