

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 542/JPR/2023
निर्धारणवर्ष/Assessment Years : 2018-19

Shri Mangla Ram Nimbark D-3, Sanchar Vihar Colony Vaishali Nagar, Ajmer-305 001	बनाम Vs.	The ITO Ward-2(1), Ajmer
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AARPG 2222 M		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओरसे/ Assessee by : None
राजस्व की ओरसे/ Revenue by: Smt Monisha Choudhary(Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 03/10/2023
उदघोषणा की तारीख/ Date of Pronouncement: 04/10/2023

आदेश/ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee against the order of Id. CIT(A) dated 07-08-2023 National Faceless Appeal Centre, Delhi [here in after (NFAC)/CIT(A)] for assessment year 2018-19 raising therein following grounds of appeal.

- "1. That natural justice avoided.
2. That it is case of employ8ees of DOT who have been w.e.f.01-10-20222 absorbed in BSNL and thus is a Government

employees and is entitled for full exemption u/s 10(10AA)(i) at Rs.6,87,030/-.

3. That the Id. CIT(A) has wrongly disallowed Rs.3,87,030/- for exemption u/s10(10AA)(i) not considering the facts.

2.1 At the time of hearing of the appeal, it is noted that none appeared on behalf of the assessee, however, an adjournment application dated 30-09-2022 was sent by the assessee himself praying therein that his CA is out of India to represent case on 03-10-2023 and shall return only on 20-10-2022 for which the case of the assessee be adjourned in next date.

2.2 On the other hand, the Id. DR objected to the adjournment application (supra) and also relied upon the order of the Id. CIT(A).

2.3 After hearing the Id.DR, the Bench decided to dispose off the appeal of the assessee on merit based on the materials available on record.

2.4 Brief facts of the case are that the assessee was originally employee of DOT (Department of Telecom) which is a central govt. organization and the assessee served in the department till 01-10-2000. Subsequently, by Govt, Notification Order No. 27-1(Raj)/Ajmer/798/2002-2002 dated 30-01-2022, the employees of DOT were absorbed in Bharat Sanchar Nigam Ltd. (for short "BSNL") w.e.f. 01-10-2000. Finally, the assessee retired from BSNL services on superannuation for which the assessee was paid leave encashment u/s 10(10AA)(i) amounting to Rs.6,87,030/-(Rs.4,25,959/- for

the period of service rendered with DOT and Rs.2,61,071/- for the period service rendered with BSNL) for which the assessee claimed Rs.6,87,030/- in return filed for the year under consideration as exempt income u/s of the Act. It is also noted that an application u/s 154 of the Act was filed by the assessee before the AO who rejected the claim of the assessee 10(10AA)(i) at the time of processing the return.

2.5 Against the rejection of the claim by the AO u/s 154 of the Act, the assessee carried the matter before the Id. CIT(A) who confirmed the action of the AO by observing as under:-

“5.4 After duly considering the grounds of appeal, the details mentioned in the letter dated 17-09-2022 to the CIT(Appeal), Income Tax Department and the details mentioned in the order u/s 254 dated 02-02-2022 of the ADIT, CPC, Bangalore, it is hereby held that there is no merit in the appeal filed by the appellant and addition made of Rs.3,87,040/- in the order u/s 154 dated 02-02-2022 by the AO, CPC, Bangalore, is hereby confirmed.

5.5 In the result, the appeal is dismissed.”

It is noteworthy to mention that the Bench while hearing the appeal of the assessee drew a reference on the issue in question that similar issue was decided by this Bench in the case of Shri Ram Charan Gupta vs ITO (ITA No. 408/JPR/2022 dated 27-06-2023 wherein the Bench allowed the appeal of the assessee by observing as under:-

"8. We have heard the rival contentions and perused the material placed on record. The bench noted that the assessee relying the decision of Hon'ble Delhi High Court has issued a notice to the Union of India in the case of Kamal Kumar Kalia &Ors. Vs. Union of India &Ors in WP(C) 11846/2019 dated 08.11.2019 wherein the court has given following directions :-

"8. We are however of the, prima facie, view that the grievances of the petitioner with regard to exemption limit under Clause (ii) of Section 10 (10AA) not being raised since 1998, appears to be justified. This is so because over the decades, the pay-scales admissible to government servants, and even employees of the Public Sector Undertaking and Nationalised Banks and all others have been upwardly revised, keeping in view, the financial growth in the country as well as on account of rising inflation. The last drawn salaries have increased manifold since time and notification issued under Clause (ii) of Section 10(10AA) was lastly issued, as taken note of hereinabove, on 31.05.2002. We therefore, issue notice to the respondents limited to this aspect.

9. Issue notice, learned counsel for the respondents accepts notice. Respondents should file counter affidavits be filed within six weeks. Rejoinder thereto, if any, be filed before the next date."

8.1 Recently the Central Board of Direct Taxes Suomotu revised the limit for deduction u/s 10(10AA) of the Act and the revised limit now stood at Rs. 25,00,000 as specified vide notification no. 31/2023 issued by the ministry of finance. Since the leave encashment amount as claimed by the assessee is amount to Rs. 6,97,100/- which is below the revised limit of leave encashment exempt prescribed by the Board, the assessee is eligible to claim of deduction of said Rs. 6,97,100/-. Based on these observations the Id. AO is directed to allow the claim of the assessee u/s. 10(10AA) of the act within the revised limit as prescribed. In terms of these observations the appeal of the assessee is allowed.

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

In this case also, since the leave encashment as claimed by the assessee is amounting to Rs.6,87,030/- u/s 10(10AA)(i) of the Act which is below the limit of Rs.25.00 lacs as specified vide Notification No. 31/2023 issued by the CBDT, Ministry of Finance, New Delhi, therefore, the assessee is

eligible to claim deduction of said amount of Rs.6,87,030/- and thus the AO is directed to allow the claim of the assessee u/s 10(10AA)(i) of the Act within the revised limit as prescribed in the notification . Hence, in terms of these observations, the appeal of the assessee is allowed.

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

Order pronounced in the open court on 04/10/2023.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 04/10/2023

***Mishra**

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Mangla Ram Nimbark, Ajmer
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(1),Ajmer
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 542/JPR/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asst. Registrar