

**आयकरअपीलीयअधिकरण, विशाखापटणम "SMC" पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM "SMC" BENCH, VISAKHAPATNAM**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष  
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER**

**आयकर अपील सं./I.T.A.No.126/Viz/2023  
(निर्धारण वर्ष / Assessment Year : 2019-20)**

Vijay Pemmaraju  
D.No.49-51-1a, Plot No.20  
Flat No.303, Sankalp Paradise  
Santhipuram  
Visakhapatnam  
**[PAN : AEMPP5571M]**

Vs. Income Tax Officer  
Ward-2(5)  
Visakhapatnam

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से / Respondent by

: Shri Y.Surya Chandra Rao, AR  
: Shri Madhukar Aves, DR

सुनवाई की तारीख / Date of Hearing

: 07.11.2023

घोषणा की तारीख/Date of Pronouncement

: 29.11.2023

**आदेश /O R D E R**

**Per Shri Duvvuru RL Reddy, Judicial Member :**

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals) [CIT(A)], National Faceless Appeal Centre (NFAC), Delhi vide DIN & Order No.ITBA/NFAC/S/250/2022-23/1050582281(1) dated 10.03.2023, arising out of order passed u/s 154 of the Income Tax Act, 1961 (in short 'Act') dated 29.10.2021 for the Assessment Year (A.Y.) 2019-20.

2. Brief facts of the case are that the assessee is an individual, having income from salary, house property and other sources, filed the return of income for the A.Y.2019-20, declaring an income of Rs.7,47,129/- after claiming a sum of Rs.9,22,260/- as exempt from income tax u/s 10(10AA) of the Act. The assessee has joined as a Technician in the Department of Telecom in the year 1981 under the Central Government and retired from Bharat Sanchar Nigam Ltd., a public sector undertaking. The assessee submitted that the Govt. of India had corporatized the Department of Telecom to Bharat Sanchar Nigam Ltd. ("BSNL" in short) w.e.f. 01.10.2000. During the conversion process, the Central Government has assured all the benefits as Central Government Employees will be allowed to the employees working in Department of Telecom till the date of Corporatization. The assessee has credit of 280 days of leave credit at the time of retirement for the service rendered in Department of Telecom from 1981 to 2000, year of Corporatization. The assessee has credit of 20 days of leave at the time of retirement as employee of BSNL. The sum received for 280 days of leave to the tune of Rs.8,60,776/- is exempted under sub section 1 of section (10AA) as entire amount is exempted for a central government employee. The sum received for 20 days of leave to the tune of Rs.61,484/- is exempted under sub section 2 of section

(10AA) as entire amount is exempted as it is below the threshold limit of Rs.3,00,000/- as notified. As the system was not accepting the combination of the two exemptions allowable to the assessee, the assessee prayed to consider the factual and legal position and grant relief by allowing the entire amount of Rs.9,22,260/- received as leave encashment at the time of retirement instead of restricting the same to Rs.3,00,000/-.The CPC has calculated the exemption u/s 10(10AA) basing on the present declaration that the assessee is an employee of BSNL, a PSU and hence the exemption u/s 10(1AA) was restricted to Rs.3,00,000/-. The CPC, Bangalore had sent an intimation, restricting the exemption to Rs.3,00,000/- and processed the return. The assessee filed a rectification petition u/s 154 before the CPC to rectify the error and compute the exemption at Rs.9,22,260/- which was rejected.

3. Aggrieved, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) held that the assessee is other than central and state government employee and as such he is entitled for claim of exemption under section 10(10AA)(ii) to the extent of Rs.3,00,000/- only in terms of notification No.123/2002/F.No.200/23/98-ITA-I dated 31.05.2002 which is presently in force. Hence, Ld.CIT(A) held that the CPC was right in restricting the exemption claim of the assessee in respect of leave

salary encashment as per rules relevant to section 10(10AA(ii)). The Ld.CIT(A) relied on the judicial pronouncement in the case of Kamal Kumar V. UOI (2020) 268 Taxman 398/187 DTR 433/313 CTR 779 and dismissed the appeal of the assessee.

4. Aggrieved by the order of the Ld.CIT(A), the assessee preferred an appeal before the Tribunal by raising the following grounds of appeal :

1. *The order of the Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, Delhi u/s 154 is erroneous in law and contrary to the facts of the case.*
2. *The CIT(A) has failed to appreciate the fact that the BSNL was converted by the Government of India from the Department of Telecom and service rendered in the Department of Telecom is deemed to be service rendered as a Government employee and eligible for exemption at the time of retirement.*
3. *The CIT(A) is not justified in rejecting the plea of the Appellant and restricting the Leave Encashment to Rs.3,00,000/- u/s 10(10AA).*
4. *The CIT(A) has failed to appreciate the fact that the Appellant has rendered Service to the Government of India (Central Government Employee) and leave encashment received at the time of retirement is fully exempted u/s 10(10AA) of the Income Tax Act in the case of Government Employees.*
5. *The CIT(A) has failed to appreciate and consider the scheme framed and benefits granted to the employees by the Government of India while corporatizing the Department of Telecom to Bharat Sanchar Nigam Limited.*
6. *For these and any other ground or grounds that may be urged at the time of the hearing, it is prayed that the order of the CIT(A) restricting the exemption and taxing the balance may please be quashed and grant relief to the appellant.*

5. All the grounds of appeal are related to denial of exemption claimed u/s 10(10AA). The Ld.AR submitted that the assessee joined Department of Telecom in year 1981 and the corporatization of the Department of Telecom to BSNL was done in the year 2000. While converting the Department of Telecom to BSNL, the Government of India has approved a scheme that the whole pensionary and retirement benefits till the date of conversion will be taken care by the Government of India and till the date of conversion all the existing employees would be treated as Government Employees. The Ld.AR submitted that this fact was ignored by the revenue authorities. Taking my attention to Presidential Order filed in the paper book at page 14, the Ld.AR pleaded to consider the facts of the case and grant relief to the assessee by allowing the exemption claimed at Rs.9,22,260/-.

6. Per contra, the Ld.DR contended that BSNL is a public sector unit, hence, the assessee is not eligible of exemption of leave encashment. He relied on the order of the Ld.CIT(A) and pleaded to uphold the same and dismiss the appeal of the assessee.

7. I have heard both the parties and perused the material filed on record. Now, the question before me is to decide whether the assessee is

eligible for the benefit of full exemption of leave encashment under section 10(10AA) of the Act or not. It is undisputed fact that the assessee joined the Department of Telecom in the year 1981 which was corporatized by the Govt.of India in the year 2000. Presidential Order thereby absorbing the assessee permanently into BSNL with effect from 01.10.2000 was passed and the leave at the credit of the assessee was transferred to BSNL on the date of absorption as provided for under Sub Rule 24(b) of Rule 37-A of the CCS(Pension) Rules. I am of the view that as per provisions of section 10(10AA(i)) of the Act, the assessee is entitled for exemption on the amount of leave encashment of 280 days leave earned during the period before absorption into BSNL to the tune of Rs.8,60,776/- and 20 days of leave to the tune of Rs.61,484/- as per provisions of sub section 2 of section (10AA) of the Act. Coordinate Bench of the Ahmedabad Tribunal on similar facts and circumstances allowed the appeal of the assessee in the case of Pradipkumar Bhogilal Modi Vs. ADIT(CPC) Bengaluru vide I.t.a.No.83/Ahd/2023 dated 19.07.2023. For the sake of clarity and convenience, I extract relevant part of the order of the Tribunal which reads as follows :

*“7. Heard both the parties and perused all the relevant material available on record. The assessee was absorbed in the Department of Telecommunication in respect of BSNL vide Presidential Order dated 23.09.2019 which has given the permanent absorption effective from 01.10.2000. The assessee was initially appointed on 28.11.1983 in the Department of*

*Indian Post and Telegraphs and therefore, he was initially appointed in the Central Government which was affirmed in the certificate from the Accounts Officer of BSNL on 18.01.2023 that the leave encashment for 300 earned leave was of Department of Telecommunication originally that of Indian Post and Telegraph Department and therefore, the same cannot be treated as a PSU and the assessee is entitled for exemption under Section 10(10AA) of the Act. The CIT(A) as well as the Assessing Officer has not taken cognizance of these facts and wrongly denied the benefit of exemption of leave encashment under Section 10(10AA) of the Act. In fact, in Para 4.3 of the CIT-A's order the decision of the Tribunal, Mumbai Bench in case of Babulal Patel has been quoted but the same was not at all consider. Therefore, the appeal of the assessee is allowed."*

Keeping in view the facts and circumstances of the case and respectfully following the decision of the coordinate bench of the Ahmedabad Tribunal, I find force in the submissions of the Ld.AR and accordingly allow the appeal of the assessee.

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

Order pronounced in the open court on 29<sup>th</sup> November, 2023.

Sd/-  
(दुव्वूरु आर.एल रेड्डी)  
(DUVVURU RL REDDY)  
न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 29.11.2023  
L.Rama, SPS

की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- Vijay Pemmaraju, D.No.49-51-1a, Plot No.20 Flat No.303, Sankalp Paradise, Santhipuram, Visakhapatnam
2. राजस्व/The Revenue -The Income Tax Officer, Ward-2(5), Visakhapatnam
3. The Principal Commissioner of Income Tax, Vsakhapatnam
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam