

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA No.22/Del/2017
(Assessment Year : 2010-11)**

Suresh Kumar Arora
486, Sector 15-A
Hisar – Haryana – 125 001

vs. ACIT
Hisar, Haryana

(PAN : AAUPA 5438 L)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri V Rajkumar, Adv.
REVENUE BY : Shri Anuj Garg, Sr. DR

Date of Hearing : 14.12.2023
Date of Order : 02.01.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal filed by the assessee is directed against the order of Id. CIT
(Appeals) – Hisar dated 23.12.2015 for the Assessment Year 2010-11.

2. Grounds of appeal taken by the assessee are as under :-

“On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming following action of the Assessing Officer in:

- i) initiating proceedings u/s 147 of the Income-tax Act, 1961 and completing assessment u/s 147/143(3) of the Act at an income of Rs.17,87,660/- against the returned income in a sum of Rs.11,37,660/-;*

- ii) *initiating proceedings u/s 147 of the Act on the basis of change of opinion without there being any reason to believe that income has escaped assessment;*
- iii) *passing order u/s 147/143(3) of the Act without disposing of the objection to reopening by speaking order;*
- iv) *making an addition of Rs.6,50,000/- on account of arrear of gratuity received from the State Government after retirement by restricting the exemption claimed u/s 10(10)(1) of the Act to Rs.3,50,000/-.*
- v) *That Commissioner of Income tax (Appeals), Hisar has not issued notice before hearing of appeal, which is illegal. Hence order of the Commissioner of Income tax (Appeals) and order of the Assessing Officer, must be quashed.”*

3. At the outset, it is noticed that there is a delay of 350 days in filing the appeal. The reasonable cause has been attributed to the assessee's effort before the learned CIT(A) to recall his order as the same was passed without providing the assessee adequate opportunity of being heard. Furthermore, it has been prayed that assessee's son was suffering from severe mental illness. In these circumstances, assessee has sought condonation of delay.

4. Upon hearing both the parties and considering the cause attributed for the delay, we condone the same.

5. Brief facts of the case are that assessee filed return of income declaring total income of Rs.11,37,656/-. The learned Assessing Officer observed that assessee has claimed excess gratuity of Rs.6,50,000/- under section 10(10) of the Income-tax Act and the Assessing Officer was of the view that assessee is not entitled for this claim because as an employee of Hisar Agriculture University, he cannot be considered as state Government employee or holder of civil post under the state.

4. Upon assessee's appeal, Id. CIT (A) concluded in para 5.2.11 as under:

“5.2.11 Considering the above discussion, I hold that appellant is not a holder of civil post under a state government and eligible for exemption u/s, 10(10)(i) of Income Tax Act. He is not covered by Section 10(10)(ii) as he did not receive gratuity under the payment of gratuity Act, 1972. Hence, employees of the University are covered U/s. 10(10)(iii) of IT. Act for which there is limit on the gratuity amount allowable. CBDT has approved the notification of Rs. 10 lakhs on the maximum amount of gratuity u/s 10(10)(iii) of Income Tax Act vide its notification no 43/2010 dated 11.06.2010. This notification is applicable to employees who retire on or after 24.05.2010. Before 24.05.2010 the exemption u/s 10(10)(ii) was restricted to Rs. 3,50,000/-. Therefore, I hold that the appellant who retired before 24.05.2010 is eligible for exemption on gratuity to the extent of Rs. 3,50,000/- only. The additions made by AO of Rs. 6,50,000/- on account of excess claim of gratuity are upheld. The appeal on this ground is dismissed.”

5. At the outset, learned Counsel for the assessee submitted that assessee's case is squarely covered in favour of the assessee by several decision of ITAT in similar cases.

6. Per contra, learned DR relied upon the order of authorities below.
7. Upon careful consideration, we find that Co-ordinate Bench of ITAT in the case of ITA No.2223/Del/2016 for A.Y. 2011-12 vide order dated 15.06.2022 has held as under:

“7. Giving thoughtful consideration the matter on record. The bench is of considered opinion that Ld. DR was unable to cite any factual distinction or provision of law then one which were considered in the Coordinate Bench’s decisions cited above. In ITA No. 3713/Del/2016, based upon another order in ITA No. 1307/Del/2016 where in it was observed in para no. 4 of ITA No. 3713/Del/2016 as below :

“4. I have heard the rival submissions and perused the relevant material on record. The controversy in this appeal can be viewed separately in respect of receipt of gratuity amount and leave encashment. In so far as the addition on account of gratuity received by the assessee amounting to Rs.6,50,000/- is concerned, it is found that the case of the assessee is that this amount falls u/s 10(10)(i) of the Act. On the contrary, the Revenue has treated it as a case falling u/s 10(10)(iii). In order to appreciate the rival contentions in right perspective, it will be apposite to set out the relevant parts of section 10, as under :-

*“(10) (i) any death-cum-retirement gratuity received under the revised Pension Rules of the Central Government or, as the case may be, the Central Civil Services (Pension) Rules, 1972, or under any similar scheme applicable to the members of the civil services of the Union or holders of posts connected with defence or of civil posts under the Union (such members or holders being persons not governed by the said Rules) or to the members of the all-India services or to the members of the civil services of a State or **holders of civil posts under a State** or to the employees of a local authority or any payment of retiring gratuity received under the Pension Code or Regulations applicable to the members of the defence services ;*

(ii).....

(iii) any other gratuity received by an employee on his retirement or on his becoming incapacitated prior to such retirement or on termination of his employment, or any gratuity received by his widow, children or dependants on his death, to the extent it does not, in either case, exceed one-half month's salary for each year of completed service, calculated on the basis of the average salary for the ten months immediately

preceding the month in which any such event occurs, subject to such limit as the Central Government may, by notification in the Official Gazette, specify in this behalf having regard to the limit applicable in this behalf to the employees of that Government :

.....

Provided further that where any such gratuity or gratuities was or were received in any one or more earlier previous years also and the whole or any part of the amount of such gratuity or gratuities was not included in the total income of the assessee of such previous year or years, the amount exempt from income-tax under this clause shall not exceed the limit so specified as reduced by the amount or, as the case may be, the aggregate amount not included in the total income of any such previous year or years.'

5. A careful perusal of the above provision indicates that if a case falls under clause (i) of section 10(10), the entire amount of death-cum-retirement gratuity becomes exempt. Au contraire, if a case falls under sub-clause (iii) of section 10(10), then, the exemption is limited to the amount as the Central Government may notify in official gazette. It is an accepted position that the Notification u/s 10(10)(iii) issued on 24.5.2010 raised the ceiling of exemption from Rs.3,50,000/- to Rs.10 lac. Since the original amount was received by the assessee during the currency of an earlier year on his retirement, the exemption limit prevalent at that time at Rs.3,50,000/- was used by the assessee. It is nobody's case that the extended limit of exemption can be applied to the assessee, because of his retirement which took place much before the cut-off date. To be more specific, the question is as to whether the extant case falls under clause (i) or clause (iii) of section 10(10). If a case does not fall under clause (i), it will automatically go to clause (iii). On a specific query from the Bench, the ld. AR submitted that the case of the assessee should be considered under sub-clause (i) of section 10(10) as a 'holder of civil post under a State.' In order to construe any person as a holder of civil post under a State, two requirements must be fulfilled viz., first that the employee should be holding a civil post and, second, such civil post must be under a State.

6. The first condition is that the employee should be holding a civil post. The assessee was appointed as a Research Assistant in December, 1971, who eventually rose to the post of Head of Department, Plant Breeding Department at the time of his retirement. Page 32 of the paper book is copy of the assessee's Pension Payment Order, which depicts the assessee's designation as Sr. Scientist, Department of Plant Breeding. On the 'Pensioner's Portion' of this document, there is a reference to Rule 10, 11 and note thereunder of Civil Services Rules (CSR) V.II. As the assessee's pension has been computed under Civil Services Rule, it goes to show that the assessee was holding a 'civil post' at the time of his retirement. No other contrary material has been placed on record by the ld. DR to show that the assessee was holding a post other than civil post.

7. The second requirement is that such civil post must be under a State. Page 20 of the paper book is a copy of Haryana and Punjab Agricultural University Act, 1970, which was passed by the Parliament

and received the assent of the President on 2nd April, 1970. Under this Act of Parliament, two independent agricultural universities in place of the hitherto Punjab Agricultural University, were established. Section 5 of this Act sets out the name of CCSU as the agricultural university to function within the territories of State of Haryana. This proves that the CCSU was established by an Act of Parliament. Page 29 of the paper book is a document which shows that the assessee is a State University covered under University Grants Commission (UGC). It is undisputed that the entire funding of the CCSU is done by the State Government. Page 25 is a copy of Notification issued by the Haryana Government increasing the maximum limit of death-cum-retirement gratuity at Rs.10 lac, under which the assessee has received the arrears of retirement gratuity under this scheme only. The above facts amply demonstrate that CCSU is covered under the expression 'State.' This is further corroborated from Article 12 of the Constitution of India which states that: 'In this part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the legislature of each of the States either local or other authorities within the territory of India or under the control of the Government of India.' The expression 'other authorities' has been interpreted in Umesh v. Singh A 1967 Pat. 3(9) F.B. as including: 'a Board, a University, the Chief Justice of a High Court, having the power to issue rules, bylaws or regulations having the force of law.' The above discussion manifests that CCSU is covered within the meaning of 'State'.

8. As the assessee is found to be an employee holding a civil post under a State, in my considered opinion, the provisions of section 10(10)(i) are fully attracted in this case entitling him to exemption for the amount under consideration. Once a case falls under clause (i) of section 10(10), the same cannot be brought within the purview of clause (iii) of section 10(10). I, therefore, hold that the assessee is entitled to exemption u/s 10(10)(i) in respect of gratuity amount received in total upto Rs.10 lac, which covers a sum of Rs.6,50,000/- received during the year. Overturning the impugned order on this score, I allow exemption u/s 10(10)(i) to the arrears of gratuity received by the assessee at Rs.6,50,000/- during the instant year..”

8. Thus, respectfully following the settled proposition of law in regard to class of employees to which assessee also belongs, the Grounds are sustained and the appeal is allowed. The impugned order is set aside. The Ld. AO shall allow exemption u/s 10(10) of the Act, to the disputed amount of gratuity received by the assessee, during the instant year.

8. Since the facts are similar and the assessee is the employee of the same university, we set aside the order of learned CIT(A) and decide the

issue in favour of the assessee. We direct the Assessing Officer to allow exemption under section 10(10) of the Act on the disputed amount of gratuity received by the assessee during the year.

9. In the result, appeal of assessee stands allowed as above.

Order pronounced in the open court on this 2nd day of January, 2024.

**Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated the 2nd day of January, 2024

Priiti Yadav, Sr. PS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**