

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.310/Ind/2023
Assessment Year: 2020-21

Shri Vinesh Kumar Singh,, H.No.36, Phase I, Riviera Town, Bhopal	बनाम/ Vs.	CIT(Appeal)-NFAC, Income Tax Office, Delhi
(Assessee / Appellant)		(Revenue / Respondent)
PAN: AMLPS4611G		
Assessee by	Smt. Amita Varshney, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	02.01.2024	
Date of Pronouncement	04.01.2024	

आदेश/O R D E R

Per Manish Borad, A.M.:

This appeal at the instance of assessee is directed against the order dated 13.06.2023 passed by learned Commissioner of Income-Tax, NFAC, Delhi ["Ld. CIT(A)"], which in turn arises out of assessment-order dated 16.09.2022 passed by I. T. Department, u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2020-21. The assessee has raised following grounds of appeal :-

- "1. *That the learned lower authorities have erred in not appreciating the fact that 83 days Leave earned during the period when appellant was employed with the Government of India under the Department of Telecommunication (DOT) should be treated as exempt u/s 10(10AA)(i), even when documentary evidences and case law was produced and explained."*

2. -----

2. The sole issue for consideration before us is that whether the Ld. CIT(A) erred in denying the benefit for exemption u/s 10(10AA)(i) of the Income-tax Act, 1961, for the leave encashment received by the assessee for 83 days earned leave transferred from the previous employer.

3. At the out-set, Ld. Counsel for the assessee submitted that the assessee was employed with the Department of Telecommunication from 07.03.1994, but subsequently from 01.10.2000 onwards he was transferred to Bharat Sanchar Nigam Limited (BSNL). She submitted that since 07.03.1994, the assessee is a Central Government employee. As on 1.10.2000, 83 days of earned leave was to his credit, which were transferred in his leave account maintained with BSNL. On retirement, the accumulated 300 days of leave was encashed and sum of Rs. 13,48,770/- was received. So far as earned leave accumulated during the employment with BSNL, exemption u/s 10(10AA)(i) was allowed, but for leave encashment received for 83 days of earned leave accrued to the assessee during the employment with Department of Telecommunication, exemption u/s 10(10AA)(i) was denied. She stated that the assessee is a Government employee since 07.03.1994 and under similar set of facts and circumstances Coordinate Bench of Mumbai in the case of *Babulal Patel, Mumbai vs. ITO, Wd. 34(1)(2), Mumbai in I.T.A.No. 3261/Mum/2018 dated 05.02.2019* as well as Coordinate Bench Ahmedabad in the case of *Pradipkumar Bhogilal Modi vs. ADIT (CPC) I.T.A.No. 83/Ahd/2023 dated*

19.07.2023 has laid down the ratio which is squarely applicable to the facts of the instant case and in the line thereof, the assessee is entitled to exemption u/s 10(10AA)(i) for leave encashment of alleged 83 days of Earned Leave to his credit.

4. On the other hand, the Ld. Departmental Representative though supported the orders of lower authorities, but failed to controvert the contention made by the Ld. Counsel for the assessee.

5. We have considered the facts, rival submissions and perused the material available on record. The issue before us is regarding denial of exemption u/s 10(10AA)(i) of the Act for the leave encashment of 83 days earned leave. It remains an undisputed fact that the assessee was a Central Government employee from 07.03.1994 onwards till his retirement. The assessee joined with the Department of Telecommunication, but later on as per the Government's decision and Union Cabinet approval on 25.09.2000, the assessee was permanently absorbed into BSNL w.e.f.1.10.2000. The assessee was having 83 days earned leave to his credit at the time of joining the BSNL. Ld. AO allowed the claim of exemption for 217 days of E.L. credited to employee leave account during his service with BSNL but denied the claim for 83 days of E.L. credited during his service with Department of Telecommunication.

6. We find that under the similar set of facts and circumstances Coordinate Bench, Ahmedabad in the case of *Pradipkumar Bhogilal Modi (supra)*, has held that the assessee is entitled for exemption u/s 10(10AA)(i)

of the Act for the earned leave credited in the employee's account, from the previous employer which too was under the Central Government. Relevant findings of the Tribunal reads as follow :-

"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 u/s 10(10AA)(i) of the Act. In fact, in Para 4.3 of the CIT's order the decision of the Tribunal, Mumbai Bench in case of Babulal Patel has been quoted but the same was not at all considered. Therefore, the appeal of the assessee is allowed."

7. Respectfully following the above decision, we are inclined to hold that the assessee deserves the benefit of exemption u/s 10(10AA)(i) of the Act for Rs. 3,73,160/- received for encashment of 83 days earned leave accumulated during the period of service with DOT as a Central Government employee. The finding of the Ld. CIT(A) is set-aside and sole issue raised in ground no.1 is allowed.

8. Ground no. 2 is of general nature, which needs no adjudication.
9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 04.01.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore

दिनांक/Dated : 04.01.2024.

CPU/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore