

**आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE**

**BEFORE SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No.134/PUN/2024
निर्धारण वर्ष / Assessment Year : 2022-23**

Dinesh Kumar, Blur Bell – 11 Godrej SKY Garden, Takka, Panvel, Raigad-410206 PAN : AAPPT1935N	Vs.	Deputy Director of Income Tax, Centralized Processing Centre (CPC), Bengaluru
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Assessee by :	Shri None
Department by :	Shri Ramnath P. Murkude
Date of hearing :	06-06-2024
Date of Pronouncement :	19-06-2024

आदेश / ORDER

PER S.S. GODARA, JM :

This assessee's appeal for assessment year 2022-23 arises against the CIT(A)/Addl/JCIT(A)-4, Delhi's order dated 22.12.2023 passed in DIN & Order No. ITBA/APL/S/250/2023-24/1059021449(1), in proceedings u/s. 250 of the Income Tax Act, 1961; in short "the Act".

Case called twice. None appears at the assessee's behest. We accordingly proceeded ex-parte against him.

2. It emerges at the outset that with the able assistance coming from the Revenue side that the assessee's sole substantive grievance raised herein challenges correctness of both the lower authority's action disallowing section 10 (10AA) exemption for the sole reason that he is not a

government employee since retired from a public sector undertaking "PSU" namely Oil and Natural Gas Corporation Limited (ONGC). Mr. Murkunde vehemently supported the impugned leave encashment disallowance in very terms and in the light of Kamal Kumar Kalia Vs. Union of India (2019) 111 taxmann.com 409 (Del.) that such an exemption claim is not admissible in case of PSU employee.

3. We notice in this factual backdrop that case law (2023) 152 taxmann.com 187 (Jaipur) Narender Singh Yadav Vs. ACIT has already rejected the Revenue's stand in an instance of government organization's employee as under :

"2.4 After hearing both the parties at length and also perusing the material placed on record as well as the orders of the Revenue Authorities, we find from the records that the assessee had been working in Malviya National Institute of Technology, Jaipur (Raj) and as per Govt. Order/Gazette Notification of Govt. of India issued on 6th June 2007 (PB 10-12) and Office order dated 11-10-2022 (PB 2IA), it is demonstrated that Malviya National Institute of Technology, Jaipur (Raj) is a Govt. Organisation. However, nothing rebuttal has been filed by the Revenue Authority and even no fault has been pointed out by the Revenue Authority in the said Gazette Notification and Office Order relied UpO:J. by the Id. AR of the assessee. Therefore, we have no option except to rely upon un-rebutted public documents in the shape of Gazette Notification and Office Order for reaching the conclusion that Malviya National Institute of Technology, Jaipur (Raj) is a Govt. Organisation. Apart from above, we have also noticed that the Id. CIT(A) while rejecting the claim of the assessee has solely relied upon the decision of Hon'ble Delhi High Court in the case of Kamal Kumar Kalia (supra). However, the para materia contained in the said judgement of the facts are altogether different from the facts of the present case as in the case of Kamal Kumar Kalia (supra). It was an undisputed fact that the petitioner in that case was employee of public sector undertaking and Nationalised Bank. Thus, it was held by the Hon'ble Court that public sector undertaking and nationalized banks cannot be treated as Govt. Employee. However, the facts in the present case of the assessee are altogether different. The Id. AR of the assessee has placed on record the Govt. Gazette Notification and Office Order to demonstrate that Malviya National Institute of Technology, Jaipur (Raj) is a Govt. Organisation. Thus in our view, the findings of the Id. CIT(A) are based on incorrect assumption of facts. Since as per the documents, Malviya National Institute of Technology, Jaipur (Raj) is a Govt. Institution, therefore, the assessee being an employee of Malviya National Institute of Technology, Jaipur (Raj) is entitled for full exemption of earned leave encashment on retirement. In view of the above deliberation, the appeal of the assessee is allowed."

4. We adopt the foregoing discussion mutatis mutandis to accept the assessee's sole and substantive ground in very terms. Ordered accordingly.

5. This assessee's appeal is allowed in above terms.

Order pronounced in the open court on 19th June, 2024.

Sd/-
(R.K. Panda)
VICE PRESIDENT

Sd/-
(Satbeer Singh Godara)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 19th June, 2024.
रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune