

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri Prashant Maharishi (AM)

I.T.A. No. 1164/Mum/2024 (A.Y. 2021-22)

Nilu Vijay Jethani D/1 Sunil Raj CHS Ground Floor Tilak Road, Kopari Thane East-400603. PAN : AERPJ3894R (Appellant)	Vs.	The Income tax officer Ward (70)(1) Thane Maharashtra (Respondent)
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Assessee by	Ms. Priyanka Sharma
Department by	Shri R.R. Makwana
Date of Hearing	13.06.2024
Date of Pronouncement	24.06.2024

ORDERPer Prashant Maharishi Accountant Member

1. This appeal is filed by Ms. Nilu Vijay Jethani (the assessee/appellant against the appellate order passed by the National faceless appeal Centre (NFAC), Delhi (the learned CIT – A) for assessment year 2021 – 22 dated 8/2/2024 wherein the appeal filed by the assessee against the rectification order passed by the central processing Centre Bangalore under section 154 of the act dated 4/8/2023 was dismissed.
2. The only issue in this case is the denial of exemption under section 10 (10 AA) (i) and (ii) in respect of leave encashment received on superannuation by the assessee in the intimation passed under section 143 (1) of the act. The assessee filed an application supporting its claim of the above exemption such as certificate, form number 16 etc. but application was dismissed.

3. Assessee is an individual who filed her return of income on 24/12/2021 which was processed under section 143 (1) of the act on 7/12/2022. The assessee retired on superannuation from Mahanagar Telecom Nigam Ltd on 31/3/2020 and she was in receipt of an amount of Rs. 763,175 towards leave encashment in financial year 2020 – 21. Part of leave encashment of Rs. 508,783, assessee is entitled for exemption under section 10 (10 AA) (i) of the act being a central government employee absorbed in Mahangar Telecom Nigam Ltd and the remaining part of leave encashment amounting to Rs. 254,392 is exempt under(ii) of the section. Thus, the total sum of Rs. 763,175/- was claimed as exempt and the taxable amount of leave encashment was Rs nil. The assessee supported her claim with the copy of a certificate issued by the public sector undertaking authority i.e., Deputy manager (works) WS MTNL , Mumbai and form number 16.
4. The above claim of the assessee was denied under section 143 (1) of the act thus the income from salary shown by the assessee of Rs. 576,071/- was assessed at Rs. 1,039,246/-. Assessee preferred an application under section 154 of the act which came to be disposed of on 4/8/2023 wherein without giving any reason the rectification application of the assessee was rejected. Thus, the total income of the assessee offered in the return of income of Rs. 701,050/- was computed under section 143 (1) of the act at Rs. 1,164,230 stands as it is.
5. Assessee preferred appeal before the first appellate authority. The appeal of the assessee was dismissed for the reason that the learned CIT – A held that assessee should have filed an appeal against order passed under section 143 (1) of the act and filing an application under section 154 of the act and then filing an appeal before the learned CIT – A assessee is claiming a backdoor entry. The original cause of action arose in intimation passed under section 143 (1) of the act and therefore the appeal of the assessee was dismissed.

6. Assessee is in appeal before us. We have heard the learned authorized representative and considered the facts of the case, it was pointed out that a certificate was issued wherein the claim of the exemption was stated to cultivate form number 16 whereas such exemption was granted. We also heard the learned departmental representative, and perused the orders of the lower authorities.
7. We find that the assessee is an employee of a public sector undertaking, on retirement she has received certain funds. Such funds are towards leave encashment. The total funds received were Rs. 763,175/-. Part of the funds were entitled to exemption under section 10 (10 AA) (i) of the act to the extent of Rs. 508,783/-. The balance fund to the extent of Rs. 3 lakhs are exempt under clause (ii) of that section. The balance sum is Rs 254392/-. We do not find there is any error in the claim of the assessee, the central processing Centre also did not say why assessee is not eligible for this deduction/exemption despite having the certificate and form number 16. The learned CIT – A instead of examining the claim of the assessee has dismissed the appeal of the assessee for altogether a frivolous reason. We are not upholding the order of the CIT – A who was duty-bound to decide the case of the assessee on merit and not to cast aspersions on the claim of the assessee that assessee is making a backdoor entry. There is no reason that the assessee is not entitled to file an appeal against the order passed under section 154 of the act. There is also no reason that if the assessee is adopting one of the alternatives available with her of either filing an appeal or filing an application for rectification, there can be any fault on the side of the assessee. In fact, by filing a rectification application assessee is running a larger risk of crossing several thresholds in litigation. Therefore, the order of the learned CIT – A is like abdicating his duty of deciding the issue on merit. When he was provided with a written submission which is recorded by him in

paragraph number 3 of the appellate order, not deciding the issue on the merit is a travesty of justice.

8. Now we decide the issue on merit as there is no point in restoring this matter back to the CIT – A. We find that the claim made by the assessee is not disputed either by the CPC, or CIT appeal . In view of this as there is no claim that the exemption to the assessee is not available and also looking to the nature of the claim, smallness of the amount, status of the assessee as a retired servant, we direct the learned assessing officer to grant the exemption under section 10 (10AA)((i) & (ii) to the assessee as claimed. Accordingly solitary ground of appeal is allowed.
9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court 24th June 2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Mumbai : 24.06.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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