आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Sanjay Awasthi, Accountant Member

I.T.A. Nos.1458, 1459, 1461 & 1462/Kol/2023
Assessment Years: 2017-18, 2013-14, 2016-17 & 2018-19

ITO, Gangtok…….……..…….....…...……....Appellant

vs.

Kailash Agarwal, Gangtok.....….…..... Respondent
C/o J P Enterprise, Denzong
Cinema Road, Gangtok,
Sikkim – 737101.
[PAN: AOMPA4461M]

Appearances by:
Shri A. Kundu, CIT-DR and Shri P. P. Barman, Addl. CIT, Sr. DR, appeared on behalf of the appellant.
Shri A. N. Chatterjee, CA and Argha Kumar Mitra, FCA, appeared on behalf of the Respondent.

Date of concluding the hearing : September 23, 2024
Date of pronouncing the order : September 23, 2024

आदेश / ORDER

PER BENCH:

The captioned appeals have been preferred by the assessee against the separate orders dated 02.11.2023 (for the first three appeals) & 06.11.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act') for different assessment years respectively. Since, common facts and issues are involved in all the four appeals, which are also pertaining to the same assessee, hence, the same are heard together and are being disposed of by this common order.

2. The only issue involved in this appeal is as to whether the assessee is entitled to exemption u/s 10(26AAA) of the Act, being a Sikkimese resident.

3. The Assessing Officer denied the exemption observing that though the assessee has been residing in Sikkim but he was not the original resident of Sikkim. The ld. counsel pleaded that the assessee and his ancestors were old settler of Sikkim and that because of that, he was to be treated at par with Sikkimese resident. However, the Assessing Officer did not agree with the aforesaid contention of the assessee and denied the exemption to the assessee u/s 10(26AAA) of the Act. In the meantime, the assessee along with other old settlers of the Sikkim filed a Civil Writ Petition before the Hon'ble Supreme Court. The Hon'ble Supreme Court in Writ Petition (C) No.59 of 2013 vide order dated 13.01.2023 has held as under:

> *"In the result, the writ petitions are disposed of in the following terms:*
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> *(i) That the benefit of income-tax exemption presently is restricted only to those Sikkimese who fall within the three clauses of the Explanation to Section 10 (26AAA) of the .T. Act, 1961, or those persons domiciled in Sikkim, or are Sikkimese as covered under the 1961 Regulation.*
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> *(ii) in terms of the Sikkim (Citizenship) Order, 1975 as amended by the Sikkim (Citizenship) Amendment Order, 1989, issued by the Government of India any person who was a Sikkim Subject under the 1961 Regulation was to be deemed to be a citizen of India w.e.f. 26th April, 1975. Conversely, it is held that all citizens of India, having a domicile in Sikkim on the day it merged with India i.e. 26th April. 1975 must be covered, under the Explanation in order to avail the benefit of the exemption tinder Section 10(26AAA) of the I.T. Act. 1961.*
>
> *(ii) The Union of India shall make an amendment to Explanation to Section 10 (26AAA) of I. T. Act, 1961, so as to suitably include a 116 clause to extend the exemption from payment of income tax to all Indian citizens domiciled in Sikkim on or before 26th Apil, 1975. The reason for such a direction is to save the explanation from unconstitutionality and to ensure parity in the facts and circumstances of the case.*
>
> *(iv) Till Such amendment is made by the Parliament to the Explanation to Section 10 (26AAA) of I.T. Act, 1961, any individual whose name does not appear in the Register of Sikkim Subjects, but it is established that such individual was domiciled in Sikkim on or before 26th April, 1975, shall be entitled to the benefit of exemption. This direction is being issued in exercise of powers under Article 142 of the Constitution so as to eliminate discrimination and disparity in respect of the aforesaid*

category of Sikkimese, who subsequently have become citizens of India w.e.f. 26th April, 1975 and to save the Explanation from being rendered unconstitutional vis-a-vis such individuals who form a small percentage of Sikkimese.

(v) Proviso to Section 10 (26AAA), insofar as it excludes from the exempted category, "a Sikkimese woman who marries a non-Sikkimese man after 1st April, 2008" is hereby struck down as being ultra vires Articles 14, 15 and 21 of the Constitution of India."

3.1 The government has also brought about an amendment to that effect in the Finance Bill, 2023."

4. In appeal before the ld. CIT(A), the assessee relied upon the aforesaid order of the Hon'ble Supreme Court and also produced a certificate from District Collector, East District, Gangtok, whereby, it was certified that Late Shri Jagdish Prasad Agarwal, son of Shri Mamanchand Agarwal, i.e. father of the assessee has been found to have been residing within the State of Sikkim on or before 26th April 1975 and has been continuously residing in the State of Sikkim since then. That the assessee Shri Kailash Agarwal is the son of Late Shri Jagdish Prasad Agarwal and has been continuously residing in the State of Sikkim since prior to 26th April 1975 or since birth.

5. We have heard the rival submissions and gone through the record. The fact that is coming out from the aforesaid certificate of District Collector East District, Gangtok is that originally the father of the assessee had been residing in Sikkim prior to 26th April 1975 and the assessee had also been residing since his birth in the State of Sikkim and therefore, the assessee would fall in the definition Sikkimese as held by the Hon'ble Supreme Court in Writ Petition (C) No.59 of 2013 (supra). The ld. CIT(A) relying on the said certificate held that the assessee is a resident of Sikkim and is entitled to exemption u/s 10(26AAA) of the Act, however, subject to the condition that the

income should be derived 'from any source in the State of Sikkim by way of dividend or interest on securities'.

6. At this stage, the ld. DR has contended that the assessee has not proved that the source of income was derived from the State of Sikkim. This ground was taken by the assessee before the ld. CIT(A) also and the ld. CIT(A) has also held that the source of the income of the assessee was from the State of Sikkim.

6.1 The ld. DR could not point out any defect or infirmity in the aforesaid factual finding given by the ld. CIT(A).

7. In view of the above, there is no merit in these appeals of the revenue and the same are accordingly dismissed.

8. In the result, the all the captioned appeals of the revenue stand dismissed.

Kolkata, the 23rd September, 2024.

Sd/-	Sd/-
[Sanjay Awasthi]	**[Sanjay Garg]**
लेखा सदस्य/**Accountant Member**	न्यायिक सदस्य/**Judicial Member**

Dated: 23.09.2024.
RS

Copy of the order forwarded to:
1. ITO, Gangtok
2. Kailash Agarwal, Gangtok
3.CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches