

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD**

BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT

I.T.A. Nos. 1134 to 1137/Ahd/2024
(Assessment Year: 2017-18, 2020-21, 2021-22 & 2023-24)

Vadodara Urban Development Authority, VUDA Bhavan, Nr. L&T Circle, VIP Road, Karelibaug, Vadodara Gujarat-390018 PAN : AAABV 0141 M	Vs.	Income Tax Officer, Circle-TDS, Vadodara
(Appellant)	..	(Respondent)
Appellant by :	Shri Kishor Parikh, CA	
Respondent by:	Shri Ketan Gajjar, Sr DR	
Date of Hearing	14.11.2024	
Date of Pronouncement	21.11.2024	

ORDER

These four appeals have been filed by the assessee against separate orders passed by the Ld. Commissioner of Income-tax (Appeals), ADDL/JCIT(A), Patna (hereinafter referred to as "CIT(A)" for short), all dated 29.02.2024, passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], whereby he disposed of the appeals filed by the assessee against orders passed by the Assessing Officer, all dated 07.11.2013, passed under Section 201(1) & 201(1A) of the Act, treating the assessee as in default for non-deduction of Tax At Source for Assessment Years (AYs) 2017-18, 2020-21, 2021-22 & 2023-24).

2. The only grievance raised by the assessee in all these appeals is as under:-

"The LAO has grossly erred in law and on facts as well as in law and considered the appellant as deductor in default under section 201 of

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the I.T. Act 1961 for not deducting TDS on certain payment of leave encashment to certain employee.”

3. The relevant facts as culled out from the records are as under:-

3.1 The Assessee is a Local Authority set up by the Govt. of Gujarat u/s. 22 of the Gujarat Town Planning & Urban Development Act, 1976. During the year, the assessee has paid leave encashment to 11 retiree employees. The assessee has not deducted TDS on the leave encashment paid. Hence, the Revenue Authorities treated the assessee as in default under Section 201(1) and 201(1A) of the Act.

3.2 The Revenue held that the payments are in excess of Rs. 3 lakhs, and since the recipients are neither State Government nor Central Government employees, hence the exemption limit cannot exceed Rs.3 lakhs and accordingly the tax has to be deducted by the disbursing authorities.

4. Aggrieved, the Assessee filed appeal before the Id. CIT(A) who confirmed the addition on the grounds that the employees of the assessee are neither State Govt. nor Central Govt. employees.

5. Aggrieved, the assessee filed appeal before the Tribunal.

6. During the hearing, the Id. AR relied on Section 10(10AA) & Section 10(10C) and also the orders in the case of Haryana Agricultural University Employees, whereas the Id. DR relied on the orders of the authorities below.

7. Heard both the parties and perused the material available on records.

7.1 The provisions of Section 10(10AA) are as under:-

(10AA) (i) any payment received by an employee of the **Central Government or a State Government as the cash equivalent of the leave salary** in respect of the period of earned leave at his credit at the time of his retirement whether on superannuation or otherwise ;

(ii) any payment of the nature referred to in sub-clause (i) received by an **employee, other than an employee of the Central Government or a State Government**, in respect of so much of the period of earned leave at his credit at the time of his retirement whether on superannuation or otherwise as does not exceed ten months, calculated on the basis of the average salary drawn by the employee during the period of ten months immediately preceding his retirement whether on superannuation or otherwise, 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 that where any such payments are received by an employee from more than one employer in the same previous year, the aggregate amount exempt from income-tax under this sub-clause shall not exceed the limit so specified : (Rs. 3 lakhs)

Provided further that where any such payment or payments was or were received in any one or more earlier previous years also and the whole or any part of the amount of such payment or payments was or were not included in the total income of the assessee of such previous year or years, the amount exempt from income-tax under this sub-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.

Explanation.—For the purposes of sub-clause (ii),—

the entitlement to earned leave of an employee shall not exceed thirty days for every year of actual service rendered by him as an employee of the employer from whose service he has retired ;

7.2 Section 10(10AA) specifically deals with tax exemption of the leave encashment at the time of retirement. Clause (i) of sub-section (10AA) deals with employees of Central Govt. or State Govt. Clause (ii) of sub-section (10AA) deals with employees other than Central Govt. or State Govt. The sub-section (10AA) specifically deals with Govt. and Non-Govt. employees under two different clauses.

7.3 To have further clarity, sub-section 10C has also been examined. The Section 10(10C) reads as under:-

(10C) any amount received or receivable by an employee of—

- (i) a public sector company ; or
- (ii) any other company ; or
- (iii) an authority established under a Central, State or Provincial Act ;
or
- (iv) a local authority ; or
- (v) a co-operative society ; or
- (vi) a University established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956) ; or
- (vii) an Indian Institute of Technology within the meaning of clause (g) of section 3 of the Institutes of Technology Act, 1961 (59 of 1961) ;
or
- (viiia) any State Government; or
- (viiib) the Central Government; or
- (viiic) an institution, having importance throughout India or in any State or States, as the Central Government may, by notification in the Official Gazette, specify in this behalf; or
- (viii) such institute of management as the Central Government may, by notification in the Official Gazette, specify in this behalf,

*on his **voluntary retirement or termination of his service**, in accordance with any scheme or schemes of voluntary retirement or in the case of a public sector company referred to in sub-clause (i), a scheme of voluntary separation, to the extent such amount does not exceed five lakh rupees :*

Provided that the schemes of the said companies or authorities or societies or Universities or the Institutes referred to in sub-clauses (vii) and (viii), as the case may be, governing the payment of such amount are framed in accordance with such guidelines (including inter alia criteria of economic viability) as may be prescribed :

Provided further that where exemption has been allowed to an employee under this clause for any assessment year, no exemption thereunder shall be allowed to him in relation to any other assessment year :

Provided also that where any relief has been allowed to an assessee under section 89 for any assessment year in respect of any amount received or receivable on his voluntary retirement or termination of

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service or voluntary separation, no exemption under this clause shall be allowed to him in relation to such, or any other, assessment year;

7.4 This sub-section 10C deals with exemption of taxable amount received by employee on voluntary retirement or termination of services. This sub-section 10C has increased the ambit of exemptions beyond State and Central Govt. employees and includes employees of PSUs, local authorities, co-operative societies, universities and authorities established by State or Central Acts. Thus, sub-section 10C has got a wider ambit to include employees beyond State and Central Govt.

7.5 Sub-section 10CC is also examined. This section reads as under:-

*(10CC) in the case of **an employee**, being an individual deriving income in the nature of a perquisite, not provided for by way of **monetary payment**, within the meaning of clause (2) of section 17, the tax on such income actually paid by his employer, at the option of the employer, on behalf of such employee, notwithstanding anything contained in section 200 of the Companies Act, 1956 (1 of 1956);*

7.6 The sub-section 10CC includes all employees who are individuals deriving income other than by way of monies. This includes every employee irrespective of category of employers.

7.7 Thus, the leave encashment at the time of retirement, benefits received at the time of voluntary retirement or termination of services, and perquisites received by the employees are all defined and subjected to various provisions of the Act, namely 10(10AA) – for leave salary, 10C – for retirement benefits and 10CC - for perquisites etc. In the governance of the Nation, three arms work in tandem namely Union Govt., State Govt. and Local Authorities. We have also gone through the notification issued by the

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Dy. Secretary, Govt. of Gujarat, Panchayat, Housing and Urban Development Department dated 30th January, 1978 which has transferred some functions and also included some villages near Vadodara to carve out Vadodara Development Authority from the erstwhile Vadodara Municipal Corporation. Even on that lines, the VUDA will become a subset of local authority. The municipal corporations, panchayats, district boards, cantonment boards are part of local authorities as per sub-section 10(20) of the Income Tax Act, and under clause (d) and (e) of Article 234 and Article 234P of the Constitution. Thus, the local bodies are distinct from State and Central Govt. Since the exemption given on account of leave encashment, retirement and perquisites varies according to the category of employees and since exemption of leave encashment is allowed to State and Central Govt. employees in full and exemption to other than State and Central Govt. employees is upto Rs. 3 lakhs as per the provisions of Section 10(10AA), it is hereby held that the assessee is liable to deduct tax on the payments made against leave encashment to their employees. The Revenue Authorities shall re-compute the quantum of tax deductible taking into consideration the exemption limit of Rs.3 lakhs prescribed by the Act.

8. In the result, all appeals of the assessee are dismissed.

The order is pronounced in the open Court on 21.11.2024

Sd/-

**(DR. B.R.R. KUMAR)
VICE-PRESIDENT**

Ahmedabad; Dated 21/11/2024

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True Copy

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad