IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI (SMC) BENCH, NEW DELHI

BEFORESHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

ITA No.648/Del/2024
Assessment Year: 2020-21

Ravinder Singh, CSC-6, A-1 Block Shopping Centre, Safdarjung Enclave, New Delhi.	**Vs.**	Income-tax Officer, Ward-73, New Delhi.
PAN : AHRPS4388K		
(Appellant)		**(Respondent)**

Assessee by	None
Department by	Sh. Sahil Kumar Bansal, Sr. DR

Date of hearing	23.12.2024
Date of pronouncement	23.12.2024

ORDER

This assessee's appeal for assessment year 2020-21, arises against the Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre [in short, the "CIT(A)-NFAC"],Delhi's DIN and order no. ITBA/NFAC/S/250/2023-24/1059604450(1) dated 11.01.2024 involving proceedings under section 154 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Case called twice. None appears at the assessee's behest. I accordingly proceeded *ex parte* against the appellant.

3. Learned DR vehemently argues during the course of hearing that both the lower authorities have rightly disallowed section 10(10AA)(i) exemption claim of Rs.7,26,090/-, as his corresponding employer, i.e., Delhi Development Authority ("DDA") could not be held either as state or central Government; as the case may be.

4. Learned DR could hardly dispute in this factual backdrop that the assessee herein as well as his employer hereinabove, are very much bound by the Delhi state governance civil servises/conduct rules and therefore, I quote (2022) 448 ITR 318 (Madras) Dr. P. Balasubramanian v/s CCIT, deciding the very issue in assessee's favour as follows :

> **"5.** The sum and substance of the stand of the Department is that the petitioners are not 'Government servants' as set out under section 10(10AA) clause (*i*) of the Act and hence cannot claim benefit of the aforesaid provision that grants an exemption from tax, in certain specific situations.
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> **6.** The provisions of section 10(10AA) read as follows :
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> Incomes not included in total income.
> 10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—
> ** ** **
> (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 limit71 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 :
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. Section 10(10AA) has two limbs/clauses. Clause (*i*) deals with the tax treatment of SLS at the time of retirement of Central/State Employee and states that the entire amount will stand exempt from the levy of income tax. Clause (*ii*) states that SLS paid to any other employee, barring Central/State Government employees, are subject to a pecuniary limit as prescribed. In the present case, since the SLS is remitted in excess of the limit fixed, the respondents would aver that the entirety of the amount attracts income tax.

8. The submissions of learned counsel for the petitioner are that (*i*) TNAU is constituted under a State Act, (*ii*) its employees are bound by the conditions and terms of employment that would be applicable to Government servants (*iii*) the payment of gratuity as well as provident fund are as applicable to Government servants and thus there is no justification whatsoever, for treating SLS differently.

9. He would refer to several decisions of the Income-tax Appellate Tribunal to attempt to persuade this Court that an employee of an agricultural university must also be taken to be a State Government employee. Mr.Abdul Saleem, learned counsel appearing for the TNAU would fully support the case of the petitioners. His stand is that the TNAU is a statutory body, a State run University and hence its employees are on par with State Government employees.

10. *Per contra*, Mr.Rajesh, learned counsel appearing for the Income-tax Department would point out to the clear distinction in the two clauses of section 10AA to drive home the point that the tax treatment of the two are separate and distinct. Since the statutory provisions have not been challenged, the interpretation accorded to the same must be strict and as provided for under the Act. He relies in this context on a decision of the Division Bench of the Delhi High Court in the case of *Kamal Kumar Kalia* v. *Union of India* [2019] 111 taxmann.com 409/[2020] 268 Taxman 398 that was rendered in the context of employees of Nationalized Banks and Public Sector Undertakings (PSUs).

11. He would specifically refer to certain observations of the Bench that, according to him, would apply to the case on hand. The observations are to the effect that, merely because the employer in question constitutes 'State' in terms of article 12 of the Constitution, it does not automatically follow that the employee must be entitled to all benefits that a Government servant would be entitled to.

12. Having heard learned counsels, my decision and reasons therefor are as follows. The admitted facts are that the TNAU is a University that is constituted under a State Act. The petitioners herein are employees of the University. Chapter VII of the Tamil Nadu Agricultural University Act, 1971 (in short 'TNAU Act') sets out the conditions of service of employees, section 34 deals with pension, gratuity and other benefits and section 35 deals with conditions of service.

13. Section 35 states that subject to the provisions of the TNAU Act, the appointment, procedure for selection, pay and allowances and other conditions of service of the officers, teachers and other employees shall be as prescribed. Chapter XII of the Tamil Nadu Agricultural University Rules (in short 'TNAU Rules') deals with the grant of gratuity-cum-pension-cum-provident fund in the following terms:

XII. GRATUITY-CUM-PENSION-CUM PROVIDENT FUND
1. The provisions of the Tamil Nadu Pension Code including the Tamil Nadu Liberalised Pension Rules, 1960 and Family Pension Rules, 1964 of the Tamil Nadu Government will apply *mutatis mutandis* to the employees of the Tamil Nadu Agricultural University in regard to the payment of gratuity and pension on their retirement. All the amendments of these rules made by the Tamil Nadu Government from time to time will apply to the University.
2. The employees who are appointed on the short tenure and who will not be eligible for pension on account of having rendered service for a period of less than five years, will be paid gratuity calculated at 1/2 month's pay for every competed ½ year of service rendered by them in the University provided they have put in 2 years of service.
3. The General Provident Fund Rules of the Tamil Nadu Government will also apply to the employees of the Tamil Nadu Agricultural University.
4. The Officers who are appointed for a short assignment will also be admitted to the General Provident Fund Rules. The rate of interest to be paid to the subscribers will be the same as adopted by the Tamil Nadu Government from time to time.

14. Section 7 of the TNAU Act provides for an unfettered right of the State to inspect and conduct enquiry into the management of the University, its various activities including teaching, the work conducted by the University, conduct of examination as well as person or persons who are connected with the administration or finances of the University, by the State.

15. The power exercised by the State Government in the functioning and management of the University is unbridled. The Governor of Tamil Nadu is, in terms of section 9 of the Act, the Chancellor of the University. It is also an admitted position that the funding of the University is entirely at the behest of the State Government.

16. Chapter VI of the TNAU Act deals with funds and accounts. Section 28 deals with General Fund and reads as follows:

28. General Fund
(1) The University shall have a General Fund to which shall be credited.
(*a*) Its income from fees, endowments, grants, donation and gifts, if any.
(*b*) any contribution or grant made by the Central Government, any State Government, the University Grants Commission or like authority, any local authority or any corporation owned or controlled by the Government; and
(*c*) other receipt.

(2) The moneys in the General Fund shall be invested in the securities specified in clauses (*a*) to (*d*) of section 20 of the Indian Trusts Act, 1882 (Central Act II of 1882).
(3) The University shall furnish such statements, accounts, reports and other particulars relating to any grant made by the Government and its utilization, as the Government may require.
The other sources of funds are set out under section 29 and read as follows:
29. Other funds:
The University may have such other funds as may be prescribed by the statutes.

17. Thus, and undisputedly, the management of the University is conducted fully from and out of the income from fees, endowments, grants, donations and gifts and contributions/grants made by the Central Government, any State Government, University Grants Commission, any local authority or any Corporation owned or controlled by the Government. The manner of investment of funds is also set out categorically in the provision itself.

18. In all, the position that obtains is that the Tamil Nadu Agricultural University is a part of the State and none of the parties before me would dispute the position that in the event of any action of the University coming to be assailed under article 226 of the Constitution of India, such challenge would be fully maintainable.

19. Compare and contrast this with other institutions that, while satisfying the requirements of article 12 of the Constitution of India dealing with 'State' would still not be fully amenable to article 226 of the Constitution of India. For instance, while Nationalised Banks and its authorities may well satisfy the definition of 'State' under article 12 of the Constitution of India for some purposes, the challenge under article 226 can be resisted on the ground that the action so challenged fall exclusively within the domain of contractual activities or private actions in which event, a Writ Petition would not lie.

20. The authority for this proposition is the judgment of Hon'ble Supreme Court in the case of *Zee Telefilms Ltd.* v. *Union of India* [2005] 4 SCC 649, wherein it is stated as follows:

** ** **

22. Above is the *ratio decidendi* laid down by a seven Judge Bench of this Court which is binding on this Bench. The facts of the case in hand will have to be tested on the touch stone of the parameters laid down in *Pradeep Kumar Biswas's* case (*supra*). Before doing so it would be worthwhile once again to recapitulate what are the guidelines laid down in *Pradeep Kumar Biswas's* case (*supra*) for a body to be a State under article 12. They are:—
(1) Principles laid down in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must ex hypothesi, be considered to be a State within the meaning of article 12.
(2) The Question in each case will have to be considered on the bases of facts available as to whether in the light of the cumulative facts as established, the body is financially, functionally, administratively dominated, by or under the control of the Government.
(3) Such control must be particular to the body in question and must be pervasive.
(4) Mere regulatory control whether under statute or otherwise would not serve to make a body a State.

21. In *Kamal Kumar Kalia's* case (*supra*), the petitioners were employees of Public Sector Undertakings (PSU) and Nationalised Banks who approached the Delhi High

Court alleging discrimination between the employees of the State and the Central Government on the one hand and the employees of PSU and Nationalised Banks on the other. In that case as well, the provision that was tested was section 10(10AA) of the Act as in the present case.

22. The challenge was repelled by the Division Bench, the Bench stating as follows :

"5. So far as the challenge to provisions of section 10(10AA) of the Act on the ground of discrimination is concerned, we are of the view that there is no merit therein. This is for the reason that employees of the Central Government and State Government form a distinct class and the classification is reasonable having nexus with the object sought to be achieved. The Central Government and State Government employees enjoy a 'status' and they are governed by different terms and conditions of the employment. Reference here may be made to the decision in *Roshan LalTandon* v. *Union of India* AIR 1967 SC 1889 wherein it was held by the Supreme Court that the legal position of a Government servant is more one of status than of Contract. The relevant extract from the said judgment reads as under:

'6. We pass on to consider the next contention of the petitioner that there was a contractual right as regards the condition of service applicable to the petitioner at the time he entered Grade 'D' and the condition of service could not be altered to his disadvantage afterwards by the notification issued by the Railway Board. It was said that the order of the Railway Board dated January 25, 1958, Annexure 'B', laid down that promotion to Grade 'C' from Grade 'D' was to be based on seniority - cum - suitability and this condition of service was contractual and could not be altered thereafter to the prejudice of the petitioner. In our opinion, there is no warrant for this argument. It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, *the legal position of a Government servant is more one of status than of contract.* The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under article 310. *But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest.* In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by Salmond and Williams on Contracts as follows :

"So we may find both contractual and status - obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligations defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively

to the sphere of contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status."
"(Salmond and Williams on Contracts , 2ndEdn . p . 12)."
(*Emphasis added*)
Thus, government employees enjoy protection and privileges under the Constitution and other laws, which are not available to those who are not employees of the Central Government and State Governments.'
6. The submission of the counsel for the petitioner is that the employees of the Public Sector Undertaking and Nationalised Banks are also rendering services for the government, and such organisations are covered by Article 12 of the Constitution of India as 'State'.
7. We do not find any merit in this submission either. Merely because Public Sector Undertaking and Nationalised Banks are considered as 'State' under article 12 of the Constitution of India for the purpose of entrainment of proceedings under article 226 of the Constitution and for enforcement of fundamental right under the Constitution , it does not follow that the employees of such Public Sector Undertaking, Nationalised Banks or other institutions which are classified as 'State' assume the status of Central Government and State Government employees. It has been held in multiple decisions that employees of Public Sector Undertakings are not at par with government servants (*Ref Officers & Supervisors of I.D.P.L.* v. *Chairman & M.D. I.D.P.L.* AIR 2003 SC 2870). In the noted case of *A.K. Bindal* v. *Union of India* [2003] 5 SCC 163, while considering the issue of revision of the pay scales of employees of government companies/PSUs at par with government employees , it was held that the employees of government companies cannot claim the same legal rights as government employees.

The relevant extract from the said judgment reads as under :

"17. The legal position is that identity of the government company remains distinct from the Government. The government company is not identified with the Union but has been placed under a special system of control and conferred certain privileges by virtue of the provisions contained in sections 619 and 620 of the Companies Act. Merely because the entire share holding is owned by the Central Government will not make the incorporated company as Central Government. *It is also equally well settled that the employees of the government company are not civil servants and so are not entitled to the protection afforded by article 311 of the Constitution* (*PyareLal Sharma* v. *Managing Director* (1989) 3 SCC 448). *Since employees of government companies are not government servants, they have absolutely no legal right* to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay scale should be met by the Government. Being employees of the companies it is the responsibility of the companies to pay them salary and if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay scale, the petitioners cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay scales. It appears that prior to issuance of the office memorandum dated 12-4-1993 the Government had been providing the necessary

funds for the management of public sector enterprises which had been incurring losses. After the change in economic policy introduced in the early nineties, the Government took a decision that the public sector undertakings will have to generate their own resources to meet the additional expenditure incurred on account of increase in wages and that the Government will not provide any funds for the same. Such of the public sector enterprises (government companies) which had become sick and had been referred to BIFR, were obviously running on huge losses and did not have their own resources to meet the financial liability which would have been incurred by revision of pay scales. By the office memorandum dated 19-7-1995 the Government merely reiterated its earlier stand and issued a caution that till a decision was taken to revive the undertakings, no revision in pay scale should be allowed. We, therefore , do not find any infirmity, legal or constitutional in the two office memorandums which have been challenged in the writ petitions."
(*Emphasis Supplied*)

We therefore, reject the present petition, insofar as the petitioners' challenge to the provisions of section 10 (10AA) is concerned.

23. In that case, the constitutionality of section 10(10AA) was itself challenged and that was repelled. Not so in the present case, where, what is challenged is only the question of whether the exemption under section 10(10AA) is available to employees of TNAU or not. This is a critical difference.

24. There are vital distinctions between the employers in that case and that in the present one. Firstly, PSUs are constituted under the provisions of the Companies Act, 1956, whereas, the Tamil Nadu Agricultural University is constituted under a State enactment coming directly within and under the control of the State. PSUs are independent companies and regulation by the Government is restricted. As far as Banks are concerned, the regulatory agency is the Reserve Bank of India.

25. The TNAU is managed, administered and substantially funded out of Government funds and grants, while PSUs are commercially run companies and have independent sources of revenues. So too with Banks that have a direct source of revenue. The TNAU is administered and managed by Regulations framed by the Statute and relatable to State power.

26. This is not the case with PSUs and banks that are managed by Boards of Directors who exercise independent control over the management. Though a government nominee may be envisaged as part of the Board, their presence is in addition, and supplemental to several other professionals and Directors. The degree of control and oversight by the State in the management of PSUs and Banks is restricted whereas, in the case of the TNAU, such power of the State is overarching.

27. As far as payment of gratuity, pension and provident fund are concerned, the provisions of Tamil Nadu Pension Code including the Tamil Nadu Liberalised Pension Rules, 1960 and Family Pension Rules, 1964 of the Tamil Nadu Government are stated to apply to TNAU employees in terms of Chapter XII of the TNAU Rules. Likewise, provident fund is governed by the General Provident Fund Rules of the Tamil Nadu Government. The rate of interest to be paid to subscribers to the General Provident Rules are the same as adopted by the Tamil Nadu Government from time to time.

28. That apart, there are a slew of decisions of the Income-tax Appellate Tribunal, wherein in the context of section 10(10AA) of the Act, employees of several Universities, such as the Haryana Agricultural University and Mahatma Gandhi University, have been held to be holding civil posts under the State Government. The decisions are (*i*) *Ram Kanwar Rana* v. *ITO* [2016] 71 taxmann.com 54/159 ITD 431 (Delhi - Trib.), (*ii*) *ITO (TDS)* v. *Mahatma Gandhi University* [2019] 107 taxmann.com 186/73 ITR (Trib.) 44/177 ITD 508 (Cochin - Trib.), (*iii*) *Dev Raj Sood* v. *ITO* [ITA No. 905/Del/2017, dated 30-5-2017] (*iv*) *Mahatma Gandhi University* case (*supra*) and (*v*) *Indra Kumari Bajaj* v. *ITO* [ITA No. 2735/Del/2017, dated 4-12-2019].

29. In light of the detailed discussion as above, I have no doubt in my mind that the petitioners, employees of Tamil Nadu Agricultural University are Government servants, entitled to the benefit of exemption under section 10(10AA)(*i*) of the Act. Impugned circular dated 17-2-2015 and consequent communications dated 30-10-2018, 19-3-2019 and 14-11-2016 issued to the petitioners by the University, are contrary to law and are set aside."

I adopt the foregoing reasoning *mutatis mutandis* in the instant case to accept the assessee's sole substantive ground herein. Necessary computation shall follow as per law.

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

Order pronounced in the open court on 23rd December, 2024

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 23 December, 2024.
*aks/-
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi