

आयकर अपीलीय अधिकरण
गुवाहाटी पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री मनमोहन दास, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SRI MANOMOHAN DAS, JUDICIAL MEMBER
&
SRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 120/GTY/2023
Assessment Year: 2014-15**

Income Tax Officer, Ward-1, Shillong	Vs.	Achula Darneichong Sailo
(Appellant)		(Respondent)
PAN: BDNPS1297L		

Appearances:

Department represented by : Kausik Ray, JCIT.

Assessee represented by : None.

Date of concluding the hearing : December 17th, 2024

Date of pronouncing the order : January 22nd, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of the Ld. Commissioner of Income Tax-NFAC, Delhi [hereinafter referred to as "the Ld. CIT(A)"] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2014-15 dated 25.08.2023, which has been passed against the assessment order u/s



147/144/144B of the Act, dated 30.03.2022. None appeared on behalf of the assessee and the appeal was heard with the assistance of the Ld. DR.

2. The Revenue has taken the following grounds of appeal:

“1. That the order of the Ld. CIT (A) NFAC Delhi is erroneous as he had not verified the source of cash deposits and Bank Transaction.

2. That the order of the Ld. CIT (A) NFAC Delhi is erroneous as he had held that the income of the assessee accrues or arises within the specified area mentioned in the provision of section 10(26) of the Income Tax Act, 1961 without verification.

3. That the order of the Ld. CIT (A) NFAC Delhi is erroneous as he had not taken into consideration that the accounts of the assessee were not audited u/s 44AB of the I.T. Act, 1961.

4. The appellant craves the leave to amend or alter any ground or add a new ground which may be necessary.”

3. The statement of facts as filed before the Ld. CIT(A) mentions that the assessee was a member of a scheduled tribe and was a medical doctor, owning Bethany Hospital in Shillong, with income exempt u/s 10(26) of the Act due to his status and location. He passed away due to COVID-19 on April 15, 2020, and his wife became the legal heir. Despite having filed returns claiming the income as exempt and being assessed accordingly in previous years, the family encountered issues with the deactivation of the assessee's PAN in the new income tax portal. Notices for non-filing of returns were issued by the Department, but responses could not be provided due to the complications faced. After escalating the matter to various authorities, the issues were resolved on October 7, 2022 allowing the family to view and respond to various notices and orders. Since no response could be made due to the issues related to the income tax portal and the glitches therein, the assessment was made suo moto without understanding the entire matter.

3.1 the Ld. AO noted that the assessee is a non-filer and during the year had earned Professional/Technical Fees of Rs. 1,24,182/- from M/s HDFC Ergo General Insurance Company Limited, contractual payments of Rs. 1,60,000/- from M/s Roche Products (India) Private Limited & M/s Sun Pharma Laboratories Limited, had paid credit card bill of HDFC Bank of Rs. 4,52,870/-, had high value Banking Transactions on 15.06.2013 in State Bank of India in which deposits of Rs 6,32,87,778/- including cash deposit of Rs. 2,83,06,500/ and Rs. 23,91,400/- were made. Despite these financial transactions the assessee had not filed the return of income. Therefore, the assessment was re-opened u/s 147 of the Act and notice u/s 148 was issued to the assessee; in response to which the assessee filed the return of income on 24.04.2021 showing income of Rs. Nil. Since the notices were not complied with, therefore the Ld. AO made the addition of Rs. 6,40,24,830/- by adding the cash deposits and income in the other transactions noticed by him to the income of the assessee. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who has allowed the appeal by observing as under:

“6. Decision on Ground of Appeal No.1&2:

I have carefully considered the submissions made by the appellant, the facts on record and the applicable law in this regard.

In this context it is relevant to refer to Section 10 under Chapter III of the I.T Act which deals with incomes which do not form a part of total income.

As per the provisions of clause (26) of Section 10 the Income Tax Act, in computing the total income of any previous year of any person, any income falling within this clause shall not be included:

in the case of a member of a Scheduled Tribe as defined in clause (25) of article 366 of the Constitution, residing in any area specified in Part I or Part II of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution or in the States of Arunachal Pradesh, Manipur, Mizoram, Nagaland and Tripura or in the areas covered by notification No.



TAD/R/35/50/109, dated the 23rd February, 1951, issued by the Governor of Assam under the proviso to sub-paragraph (3) of the said paragraph 20 as it stood immediately before the commencement of the North Eastern Areas (Reorganisation) Act, 1971 (81 of 1971) or in the Ladakh region of the State of Jammu and Kashmir, any income which accrues or arises to him,—

(a) from any source in the areas or States aforesaid, or

(b) by way of dividend or interest on securities;

In the present instance, the late assessee was a medical doctor running a hospital at Shillong. As seen from the documentary evidence submitted in the form of caste certificate, he was a member of the Khasi tribe which is a duly recognized Scheduled Tribe under the Constitution (Scheduled Tribes) Order 1950 and as specified in Section 10(26) of the Income Tax Act, he was a resident of notified area as per the Sixth Schedule to the Constitution. It is also evident that the income derived by him during the relevant A.Y was from sources in the specified areas, being receipts from the hospital run by him, technical/professional fees etc.

It is also pertinent to note that as seen from the assessment order u/s 143(3) in the assessee's own case for A.Y 2017-18 dated 28.08.2019 that during scrutiny proceedings, the A.O had made necessary enquiries and verifications and concluded that the assessee had substantiated his <claim of being a member of the Schedule Tribe community which was exempt from income tax and had provided clarifications and explanations related with the business. Accordingly, the A.O was satisfied that the assessee's income accrues or arises from the 6th Schedule area and hence qualified for exemption under section 10(26) of the Income-tax Act.

Further, as seen from the submissions the assessee had died on 15/04/2020, being the first victim of Covid in Shillong. It was further submitted that during the proceedings for the relevant A.Y 2014-15 the deceased assessee's representative/legal heir was unable to comply to the notices in view of technical glitches in the e-filing the portal and problems faced with PAN deactivation and in registering the legal heir. In view of the above, the assessee was unable to comply during the proceedings u/s 147 for AY 2014-15 as a result of which the income was assessed as above.

In the conspectus of facts and law as discussed above, it is clear that the assessee was not liable to be taxed on the income arising to him from sources that clearly fall within the ambit of Section 10(26) of the Income Tax Act. Accordingly, the additions made by the A.O are deleted and the appellant's grounds are allowed.



Accordingly, in the result, the appeal filed by the appellant is allowed.”

4. Aggrieved with the order of the Ld. CIT(A), the revenue has filed the appeal before the Tribunal.

5. The main ground of appeal of the revenue is that the Ld. CIT(A) has erred in not verifying the source of cash deposits and Bank Transactions and he has erroneously held that the income of the assessee accrues or arises within the specified area mentioned in section 10(26) of the Act without any verification and has also not taken into consideration that the accounts of the assessee were not audited u/s 44AB of the Act.

6. We have considered the submissions made. The Ld. CIT(A) has gone by the cast certificate of the assessee to hold that the assessee was a member of a duly recognized scheduled tribe as specified in section 10(26) of the Act and has concluded that the income derived by her during the relevant AY was from sources in the specified areas, being receipts from the hospital run by him and technical/professional fees etc. The Ld. CIT(A) has held that in AY 2017-18 during the scrutiny proceedings, the Ld. AO had made necessary enquiries and verifications and concluded that the assessee had substantiated his claim of being a member of the Schedule Tribe community and the Ld. AO was satisfied that the assessee's income accrued or arose from the sixth Schedule area and hence was qualified for exemption u/s 10(26) of the Act. The Ld. CIT(A) has allowed relief in the AY 2014-15 on the basis of the findings in AY 2017-18 which is not correct as the deposits in the bank account were not explained before the Ld. AO in order to substantiate the claim that the same were from sources in the areas or States specified. Since the order of the Ld. CIT(A) has not been passed in



accordance with section 250(6) of the Act and relief has been allowed to the assessee without examining the deposits in the bank account vis-à-vis the source of income claimed by the assessee, therefore, in the interest of justice, the order of the Ld. CIT(A) is set aside and the appeal is restored to be done de novo. The assessee shall be at liberty to make all submissions in support of the claim that the income was exempt u/s 10(26) of the Act as per the provisions thereof and the Ld. CIT(A) shall decide the appeal in accordance with Rule 46A of the Income Tax Rules, 1962. Hence, all the grounds of appeal are allowed for statistical purposes.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on 22nd January, 2025 under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

[Manomohan Das]

Judicial Member

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 22.01.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Income Tax Officer, Ward-1, Shillong.**
2. **Achula Darneichong Sailo, Bethany Hospital, Nongrim Hills, Laitumkhrah, Shillong, Meghalaya, 793003.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Guwahati Benches, Guwahati.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata