

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI UDAYAN DAS GUPTA, JUDICIAL MEMBER

ITA No.337/Ind/2024
Assessment Year:2018-19

Ajay Agarkar House No.4, Kalpataru Avenue, Dewas Road, Near Rukmani Motors Ujjain	<u>बनाम/</u> Vs.	NFAC Delhi
(Assessee/Appellant)		(Revenue/Respondent)
PAN: ABHPA2638L		
Assessee by	Ms. Ruchira Nerkar, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	20.01.2025	
Date of Pronouncement	.01.2025	

आदेश / O R D E R

Per UDAYAN DAS GUPTA, J.M.:

This appeal is filed by the assessee against the order of the Ld CIT (A) NFAC passed u/s 250 of the Act 61 , dated 22/12/2023, which has arisen from the rectification order of the CPC Bangalore , dated 29/10/2021, passed u/s 154 of the Act 61.

2.It is pointed out by the registry that the appeal is filed belatedly by 52 (fifty two) days. The assessee has filed an application praying for condonation of delay, explaining the reasons for delay, along with sworn affidavit executed on 15/01/2025. The assessee submitted that the order of the CIT(A) has been passed on 22/12/2023, and the date for filing appeal before tribunal expired on 21st February, 2024, and the appeal has been actually filed on 13th April, 2024 , which was delayed by 52 days . It is submitted that the appointed counsel of the assessee who filed the submission and represented the matter before the first appellate

authority, received the appeal order but did not communicate the details of the appellate order to the assessee , and it was only after the assessee approached the counsel for some other professional work in the first week of April, 2024, he was informed about the passing of the appeal order , and thereafter, the assessee took immediate steps to prepare and file this appeal before tribunal with the help and guidance of another counsel Ms Ruchira Nerkar, on 13/04/2024, which was belated by 52 days and he prayed that the delay being not intentional and wilful on the part of the assessee, the same may please be condoned and the appeal may please be admitted to be heard on merits.

2.1 The Ld DR has no objection to the said condonation .

2.2 We have seen the contents of the affidavit and considered the submission of the assessee on delay and we are of the opinion that the delay was not intentional or wilful and after being informed by his previous counsel , the assessee took immediate steps to file the appeal , and the tribunal fees was paid on 4th April, 2024 and appeal filed on 13th April, 2024. As such we condone the delay of 52 days and admit the appeal to be heard on merits.

3. The grounds of appeal taken by the assessee are as follows :

“1.That the Ld. CIT(A) erred in dismissing the appeal without properly going into reply submitted before him.

2.The appellant crave leave to add/alter any of the grounds of appeal before him at the time of hearing.”

3.1 Though the grounds of appeal taken by the assessee in form 36 , are not specific in nature, but what we understand from the order of the Ld first appellate authority , is that , the only single issue in this case relates to the allowability of exemption claimed by the assessee , on account of encashment of earned leave on retirement u/s 10(10AA) of the Act 61 , a portion of which is claimed to be covered under *clause (i)* and the remaining portion of which is claimed to be covered under *clause (ii)* .

3.2 The Id AR of the assessee submitted that the assessee was previously an employee of the *Department of Telecommunication* , Government of India , and in the year 2000, he was deemed deputed to *Bharat Sanchar Nigam Limited* , from where he retired on **01st August, 2017**. As per calculation provided by the office of the DGMM , BSNL , Bhopal , dated 2nd August, 2017, and corresponding sanction accorded under Rule 39 of CCS(Leave) Rule

1972, his earned leave credit as on 30th September, 2000 was 82 days (*Eighty two days*) which was under DOT , Government of India , and his earned leave credit as on the date of retirement was 01/08/2017 from BSNL (*Govt of India Enterprise*) was 218 days , which totals up to three hundred days (*maximum allowable*).As per calculation provided by the office of the DGMM – BO / Admin / 2017-18/AA/238/02, the assessee received an amount of Rs. 2,72,664/- being unutilized EL for the 82 days under DOT (GOI) and Rs. 7,24,886/- being unutilized EL for 218 days under BSNL , totalling Rs. 9,97,550/-. Return of income was filed by the assessee claiming exemption u/s 10(10AA) as follows : u/s 10(10AA) (i) : Rs. 2,72,664/- (being related to Department of Telecommunication , being Central Government) and ,u/s 10(10AA)(ii) Rs. 3,00,000/- (being related to any employee other than Government) , totalling to Rs.5,72,664/- .

The assessment was completed u/s 143(1) by CPC, Bangalore , on the returned income , by allowing the full claim of Rs.5,72,664/- u/s 10(10AA) of the Act 61 , as per claim in the return . Subsequently, the AO, CPC, Bangalore, rectified the said assessment vide order u/s 154 of the Act dated 29/10/2021, by disallowing the claim of the assessee made under clause (i) amounting to Rs.2,72,664/-, and only allowed the claim of Rs. 3,00,000/- under clause (ii) of the said section.The disallowance of the claim of Rs.2,72,664/- was carried in first appeal , and the Ld first appellate authority sustained the disallowance by observing as follows :

Relevant portion of the first appellate authority is reproduced :

“6.3 The appellant is claiming the entire leave encashment as exempt as on the ground that specified limit for the non-government employees have not been revised by the government since 2002 The arguments of the appellant are duly considered however the applicability of any law is governed by the existing provisions of law as passed by legislature and notifications in force at that time. As the per notification limit of Rs. 3 lakhs is laid down or prescribed and it remains in force during the year under consideration. Considering the same, there is excess claim made on account of leave encashment by the appellant in the return of income which is not permissible as per provisions of section 10(10AA)(ii). Further provisions are crystal clear and without any ambiguity, and the various websites and CBDT publications for retired employees clearly state the specified limit for non-government employees to be Rs.3,00,000/- Hence the claim should have been filed accordingly. Reliance is placed on the decision of Delhi High court in the case Kamal Kumar Kalia [2019] 111 taxmann.com 409 (Delhi) where court held that retired employees of PSUs and nationalised bank cannot be treated as Government employees and thus, they are not entitled to get full tax exemption on leave encashment after retirement/superannuation under section 10(10AA). Similarly ITAT Bangalore bench in the case of KPTCL vs ITO [2018] 93 taxmann.com 89 (Bangalore - Trib.) has held

that Employees of statutory corporations cannot be regarded as employees of State or Central Government. Considering the position of law as it exists and the notification in force, the disallowance made by the CPC is held to be in accordance with provisions of law and comes within the ambit of mistake apparent from the record on account of inadmissible claims. In view of the above, I do not find any error in the rectification order of the AO in restricting the exemption claim of the appellant to Rs.3,00,000/-. Therefore disallowance of Rs 2,72,664/-made by CPC is upheld and ground of appeal is hereby dismissed.”

3.3 The Ld AR of the assessee submitted that the Ld first appellate authority was not legally justified in treating the assessee as a non Government employee , in determining the claim for exemption u/s 10(10AA) of the Act, because in the instant case the assessee was very much a Government employee till the period 30th September, 2000, and thereafter, the assessee was permanently absorbed wef 01/10/2000, by Bharat Sanchar Nigam Limited (BSNL) a PSU and as such the cash equivalent of the leave salary at his credit at the time of his retirement , for the Government service period shall be fully exempted under clause (i) of section 10(10AA) of the Act 61 and the amount of leave salary drawn by the assessee on or after the date of absorption in BSNL (being PSU) will be taxable , subjected to the exemption limit of Rs.3 lakhs as per clause (ii) of the aforesaid section.

3.4 In support of his contention he relied on an internal instruction issued by the DGM (taxation) , of Corporate office taxation section , BSNL , New Delhi , dated 4th May, 2012, issued in the matter of deduction of TDS on leave encashment amount at the time of retirement. Thereafter, he relied on the decision of the coordinate bench in the case of *Mr Babulal Patel vs ITO -34(1)(2), Mumbai , dated 05/02/2019, in ITA No 3261/ Mum/ 2018, for the Asst year 2014-15*, where in an almost identical case in respect of a retired employee of Mahanagar Telephone Nigam Limited (MTNL) a PSU undertaking of Government of India , where the Hon’ble bench has observed as follows:

“9. I have heard the rival contentions and gone through the facts and circumstances of the case. The admitted facts are that the assessee was originally appointed as Junior Engineer with Indian Post and Telegraph Department, Govt. of India w.e.f. 24.04.1980 and thereafter, in permanent capacity as Junior Engineer in the Department of Telecommunications. Govt of India wef 22.03.1983 vide order dated 22.06.1986. Subsequently, with effect from 01.10.2000 vide order dateu 19.01.2004 issued by Department of Telecommunications, Ministry of Communication and IT, Govt. of India, in accordance with the provisions of Rule 37A of CCS(Pension) Rules, permanently absorbed in the Mahanagar Telephone Nigam Limited (MTNL) a PSU undertaking of Govt. of India. I am of the view that the assessee had been in

service under the Department of Telecommunication, Govt. of India and his stamps of appointment and pay-scale were governed by the Central Govt. Rules, framed all other such employees working in Govt. of India with effect from 24.04.1980 on adhoc basis and subsequently in permanent capacity vide order dated 22.06.1986 w.e.f 22.03.1983. The assessee was absorbed in MTNL, a Govt. of India Undertaking, w.e.f 01.10.2000 vide order dated 19.01.2004. I am of the view that as per the provisions of section 10(10AA)(i) of the Act, the assessee is entitled for exemption on the amount of leave encashment of leave earned during the period before absorption in MTNL as per section 10(10AA) (i) of the Act as applicable to Central Govt. because before that date he was employee of Govt. of India that the Central Government. The amount of leave encashment in respect of leave accrued after absorption in MTNL will be governed by the exemption as per section 10(10AA) (ii) of the Act I find that the facts are clearly in favour of assessee and for 263 days of leave as on the date of absorption was available to the assessee, which was earned and unutilized from Government service i.e. Central Government and will be governed by 10(10AA)(i) of the Act. The balance 37 days of leave earned is from MTNL and will be governed as per the provisions of section 10(10AA) (ii) of the Act. Accordingly, I allow the appeal of the assessee and direct the AO to recompute the exemption proportionately as directed above.”

3.5 Relying on the above decision, the Ld AR prayed that in the instant case also the claim of the assessee as regards the exemption under clause(i) relating to the amount of Rs.2,72,664/- pertaining to his leave salary for the period while he was in employment of the Government under DOT , may please be allowed.

4. Per contra the Ld DR relied on the order of the Ld CIT(A).

5. We have heard the contention of the rival counsel and considered the materials on record and in principal we are also in agreement with the view taken by the coordinate bench referred to above , but we also note that in the above noted case MTNL has *issued office memorandum No 7-2/2007-Fin dated 18/10/2007 , and various letters, one of them being letter no 7-2/Tax/Misc/FY 2011-12 dated 29.08.2012* clarifying that the amount of leave encashment in respect of leave earned during the period before absorption is eligible for full exemption as per section 10(10AA) (i) of the Act 61 and the amount of leave encashment in respect of leave accrued after absorption will be taxable after giving exemption as per section 10(10AA)(ii) of the Act 61 .

5.1 Further more , in the above referred case , (*Mr B B Patel*) it is seen that the Ministry of Communication and IT , Department of Telecommunication *vide reference No DIR(Estt)/MTNL Absorption / TES Gr B / Mumbai/ 03-04 dated 19/01/2004*, has permanently

absorbed the ASSESSEE in MTNL and earned leave stand transferred to MTNL vide para 6 and it was specifically admitted as under (*by name*)

6. Leave :- The earned leave and half pay leave at the credit of Shri / Smt . Patel B B stands transferred to MTNL on the date of absorption as provided for under sub rule 24(b)of Rule 37a of CCS (pension) Rules .

5.2 We also note that in the above case there were various other communications from MTNL to the above assessee which has been examined by the coordinate bench while arriving at the above conclusion . However, in the instant case , before us , we find that no such supporting papers , or Office Memorandum or personalised letters or communication addressed to the assessee , issued by BSNL authorities , has been made available to us , in course of hearing , except the copy of the instruction issued by the TDS department of BSNL .

5.3 As such , in the interest of justice, we set aside the case back to the files of the jurisdictional AO, with a direction to look into and consider the relevant papers and documents which might be filed or submitted by the assessee, from the BSNL authorities in support of his case and thereafter, to decide the issue of the claim for exemption u/s 10(10AA)(i) of the Act 61, relating to the amount of Rs. Rs.2,72,664/- pertaining to his leave salary for the period while he was in employment of the Government under DOT.

6.As a result the appeal is allowed for statistical purpose.

Order pronounced in the open court on .01.2025.

(B.M. BIYANI)
ACCOUNTANT MEMBER

(UDAYAN DAS GUPTA)
JUDICIAL MEMBER

Indore
दिनांक /Dated : 24/01/2025
Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore