

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member And
Shri Makarand Vasant Mahadeokar, Accountant Member**

**ITA No. 1179/Ahd/2024
Assessment Year 2020-21**

Suman Kumar Jha C-704, Lake Florence, Powai, Mumbai Maharashtra-400076 PAN: ABUPJ6048C (Appellant)	Vs	Dy CIT-2(1)(1), Vadodara (Respondent)
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**Assessee Represented: None (Written Submission)
Revenue Represented: Shri Rignesh Das, Sr.D.R.**

Date of hearing : 20-02-2025
Date of pronouncement : 18-03-2025

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 31.03.2024 passed by the Additional Commissioner of Income Tax (Appeals)-1, Ludhiana, National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the intimation passed under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2020-21.

2. Brief facts of the case is that the assessee is an individual and retired salaried person. For the Asst. Year 2020-21, assessee filed his Return of Income on 26/12/2020 declaring total income of Rs.44,05,230/-. The assessee claimed an amount of Rs.15,93,539/- as exempt income u/s. 10(10AA) being earned leave encashment on retirement. However the CPC restricted the claim to Rs. 3,00,000/- and added remaining amount of Rs.12,93,540/- by passing intimation u/s. 143(1) of the Act and demanded tax thereon. The assessee paid the tax demand and challenged the order by way of appeal.

3. The assessee relied upon notification no 31 of 2023 dated 24-05-2023 issued by Central Government enhancing the leave encashment limit from Rs.3,00,000/- to Rs. 25,00,000/-, therefore requested to allow the claim made by the assessee.

4. The Additional Commissioner of Income Tax (Appeals) considered the submissions and confirmed the additions by observing as follows:

6.3 In this case, the appellant had claimed the amount of Rs. 15,93,539/- as exempt income u/s Sec 10(10AA) as earned leave encashment on retirement. However the Ld AO had restricted the amount of claim to Rs. 3,00,000/- and added the remaining amount Rs. 12,93,540/- in the order u/s 143(1) of the Act. From the appellant's submission, it is clear that there is no doubt that appellant comes under Sec 10(10AA) (ii) i.e an employee, other than an employee of the Central Government or a State Government as the same had been accepted by the appellant himself.

6.4 Further in his submissions, the appellant had produced calculations of the leave encashment exempted as per provisions of section 10(10AA) of the Act. The main argument of the appellant relates to the non-issuance of any Gazette notification after 2002, as

required under Section 10(10AA), specifying the limit of the amount of leave encashment eligible for exemption for tax purposes. In this connection, it is noted that through the Notification No. S.O. 588(E), dated 31st May, 2002, a limit of Rs 3,00,000/- had been decided by the Central Government, the relevant extract is reproduced as under,

In exercise of the powers conferred by sub-clause (ii) of clause (10AA) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government, having regard to the maximum amount receivable by its employees as cash equivalent of leave salary in respect of the period of earned leave at their credit at the time of their retirement, whether superannuation or otherwise, hereby specifies the amount of Rs. 3,00,000 (rupees three lakhs only) as the limit in relation to employees mentioned in that sub-clause who retire, whether on superannuation or otherwise, after the 1st day of April, 1998.

[Notification No. 123/2002/F, No. 200/23/98-ITA-I]

Further, through the notification no 31 of 2023, the above limit had been revised to Rs 25,00,000/-. The said notification is applicable w.e.f. 01.04.2023. The relevant extract is reproduced as under:

"S.O. 2276(E). In exercise of the powers conferred by sub-clause (ii) of clause (10AA) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government, having regard to the maximum amount receivable by its employees as cash equivalent of leave salary in respect of the period of earned leave at their credit at the time of their retirement, whether superannuation or otherwise, hereby specifies the amount of Rs. 25,00,000 (twenty-five lakhs rupees only) as the limit in relation to employees mentioned in that sub-clause who retire, whether on superannuation or otherwise.

2. This notification shall be deemed to have come into force with effect from the 1st day of April, 2023."

6.6 The appellant's case pertains to the Assessment Year 2020-21, therefore, Notification No. 123/2002/F. No. 200/23/98-ITA-I dated 31/05/2002 is applicable in the appellant's case. The appellant's assertion that this notification lacks applicability in his circumstances is devoid of merit.

6.7 In view of the above, it is held that the Ld AO had rightly restricted the claim of earned leave encashment u/s 10(10AA) of the

Act to the limit of Rs. 3,00,000/- in the appellant's case. Thus, all the grounds of appeal are hereby dismissed.

5. Aggrieved against the appellate order, the assessee is in appeal before us raising the following Grounds of Appeal:

1 The Ld. Addl JCIT (A) grossly erred on facts and in law in dismissing the appeal without adjudicating the preliminary issue raised regarding the violation of statutory provision of Sec 143(1)(a) of the Income tax Act 1961 the Act in the form of non consideration of adjournment application filed with reference to the notice u/s 143(1)(a) of the Act before making the adjustment of RS 1293540

2 The order of the Ld. AO passed us 143(1) of the Act is without jurisdiction and authority of law.

3 The Ld Addl JCIT (A) grossly erred on facts and in law in dismissing the appeal without adjudicating the ground regarding non speaking order of the Ld. AO passed us 143 1

4 The Ld. Addl JCIT (A) has grossly erred in law and is not justified in confirming the addition made by the Ld. AO without deciding the involved question of law and not allowing the exemption exceeding RS 3 lakhs u/s 10 (10AA)(ii) of the Act considering the invalid Gazette Notification No 50588 E dated 31 05 2002 issued by CBDT effective 01 04 1998

5. The Ld Addl JCIT (A) grossly erred in not adjudicating the raised ground in appeal to the effect that the taxed Leave Encashment amount exceeding RS 3 lakhs qualifies for relief u/s 891 of the Act.

6 Your appellant craves leave to add amend alter withdraw any ground of appeal

6. None appeared on behalf of the assessee however a written submission filed by the assessee. The contents of the written submission are that it is the obligation of CBDT to issue notification from time to time considering the facts of salary of employee of the Government is not discretionary but mandatory. Undisputedly, the CBDT has failed to issue fresh notification during last two decades. Despite the fact that the salary of the Cabinet Secretary increase from Rs.30,000 per month to

Rs.2,96,000/- per month in the Financial Year 2019-20. Thus the non-issuance of notification raising the exemptions limit from time to time is in gross violation of statutory and mandatory provisions of Section 10(10AA)(ii) of the Act. As per the Table appended, the limit of exemption has been increased from time to time as follows:

Sr. No.	Date of Notification	Salary of (Rs) Cabinet Secretary	Month of Calculation of Leave Encashment Payment	Entitlement of Leave Encashment (Rs.)
1	08/06/1988	9180	08	9180x8=73440
2	08/06/1988	9450	08	9450x8=75600
3	08/06/1988	9720	08	9720x8=77760
4	08/06/1988	9990	08	9990x8=79920
5	26/03/1996	16290	08	16290x8=130320
6	26/03/1996	16920	08	16920x8=135360
7	27/11/1998	30000	08	30000x8=240000
8	31/05/2002	30000	10	30000x10=300000
9	24/05/2023	2,50,000 (approx.)	10	250000x10=2500000

6.1. Further the assessee relied upon various case laws.

7. Per contra the Ld. D.R. appearing for the Revenue supported the order passed by the Lower Authorities and requested to uphold the same.

8. We have given our thoughtful consideration and perused the materials available on record. It is undisputed fact that the assessee claimed an amount of Rs.15,93,539/- as exempt income u/s 10(10AA)(ii) being leave encashment on retirement. The CPC restricted the claim to Rs.3,00,000/- and added the remaining amount of Rs.12,93,540/- by passing intimation u/s. 143(1) of the Act and tax demanded was also paid by the assessee. The assessee was denied the benefit of Notification No.31/2023/F.No.200/3/2023-

ITA-1 dated 24-05-2023 which revised the leave encashment limit to Rs.25,00,000/-. The Co-ordinate Jaipur Bench decision in the case of Govind Chhatwani vs. CIT(A) in ITA No. 385/JP/2023 dated 31.10.2023 held as follows:

7. We have heard the rival contentions and perused the material placed on record. The bench noted that the apple of discord in this case that the assessee has received a sum of Rs. 17,68,479/- as leave encashment which was claimed in the return of income filed as exempt u/s 10(10AA) of the Act. The CPC and Id. CIT(A) contended that in the light of this specific notification being not issued the leave encashment allowable up to Rs. 3,00,000/- only whereas we note from the submission of the assessee that the assessee has relied upon the notification No. 31/2023/F.No.200/3/2023-ITA-1 dated 24th May, 2023 and submitted that the revised limit of Rs. 25,00,000/- increased on account of leave salary is applicable and to be considered in the light of fact that government has issued this notification belatedly. The assessee has already claimed the leave salary as exemption the benefit should be given to the assessee. The similar issue has been decided by the bench in the case of Ram Charan Gupta in ITA No. 408/JP/2022 wherein the bench has already held as under:-

“8. We have heard the rival contentions and perused the material placed on record. The bench noted that the assessee relying the decision of Hon’ble Delhi High Court has issued a notice to the Union of India in the case of Kamal Kumar Kalia & Ors. Vs. Union of India & Ors in WP(C) 11846/2019 dated 08.11.2019 wherein the court has given following directions :-

“8. We are however of the, prima facie, view that the grievances of the petitioner with regard to exemption limit under Clause (ii) of Section 10 (10AA) not being raised since 1998, appears to be justified. This is so because over the decades, the pay-scales admissible to government servants, and even employees of the Public Sector Undertaking and Nationalised Banks and all others have been upwardly revised, keeping in view, the financial growth in the country as well as on account of rising inflation. The last drawn salaries have increased manifold since time and notification issued under Clause (ii) of Section 10(10AA) was lastly issued, as taken note of hereinabove, on 31.05.2002. We

therefore, issue notice to the respondents limited to this aspect.

9. Issue notice, learned counsel for the respondents accepts notice. Respondents should file counter affidavits be filed within six weeks. Rejoinder thereto, if any, be filed before the next date."

8.1 Recently the Central Board of Direct Taxes Suomotu revised the limit for deduction u/s 10(10AA) of the Act and the revised limit now stood at Rs. 25,00,000 as specified vide notification no. 31/2023 issued by the ministry of finance. Since the leave encashment amount as claimed by the assessee is amount to Rs. 6,97,100/- which is below the revised limit of leave encashment exempt prescribed by the Board, the assessee is eligible to claim of deduction of said Rs. 6,97,100/-. Based on these observations the Id. AO is directed to allow the claim of the assessee u/s. 10(10AA) of the act within the revised limit as prescribed. In terms of these observations the appeal of the assessee is allowed."

On being consistent to the said finding, we held that the assessee is entitled to get the deduction as claimed in the return of income u/s 10(10AA) of the Act as the limit has been increased from 3 lac to 25 lacs.

In the result, the appeal of assessee is allowed.

8.1. Respectfully following the same, the claim made by the assessee is hereby allowed and the tax demand made by the CPC is hereby deleted and directed to refund the tax paid by the assessee.

9. In the result, the appeal filed by the Assessee is hereby allowed.

Order pronounced in the open court on 18-03-2025

Sd/-
(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER
Ahmedabad : Dated 18/03/2025

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee

2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद