

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'DB': NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.725/Del/2017
[Assessment Year: 2013-14]**

M/S UTTAKHAND PURV SAINIK KALYAN NIGAM LTD. (UPNL) Station Sub Area, Garhi Cantt, Dehradun-248003	Vs	ITO, Ward-2(5), Aayakar Bhawan, 13-A, Subhash Road, Dehradun Uttarakhand- 248003
PAN-AAACU7129D		
Assessee		Revenue

Assessee by	Shri Tarandeep Singh, Adv.
Revenue by	Shri Amar Pal Singh, Sr. DR

Date of Hearing	31.01.2025
Date of Pronouncement	19.03.2025

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals), Muzaffarnagar, dated 22.11.2016 for Assessment Year 2013-14 arising out of order u/s 143(3)/147 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') dated 25.02.2015.

2. The grounds of appeal raised by the assessee are as under:-

1. That, the Ld. CIT(A) erred in holding that the appellant corporation was not set up by a central, state or provisional act for the welfare and economic upliftment of ex serviceman being the citizen of India as required u/s. 10(26BBB) of the Income Tax Act, 1961.

2. That, Ld. CIT(A) and Ld Assessing Officer erred in holding that the appellant was not established by the a central, state or provisional act, both the Ld. A.O. and the CIT(A) erred in justifying that:

a. That Uttarakhand Purv Sainik Kalyan Nigam Limited was established by Government of Uttarakhand for welfare and economic upliftment of ex-serviceman and having duly satisfied the prescribed conditions of section 10(26BBB) of the Income Tax Act, 1961.

b. The main objects of the Uttarakhand Purv Sainik Kalyan Nigam Limited were to provide employment, financial assistance, loans, subsidy/grants, to impart training for entrepreneurship to the ex-serviceman and their dependents and having duly satisfied the conditions prescribed in the section 10(26BBB) of the income Tax Act, 1961.

3. That, as all the conditions prescribed in section 10(26bbb) of the Income Tax Act, 1961 were satisfied, the Ld.CIT(A) and Ld. Assessing Officer erred in holding that Assessee is not eligible for exempting the income of Rs.6,79,59,986/- for the Assessment Year 2013-14 in terms of the said Section.

4. That in the facts and circumstances of the case, the order U/s 143(3)/147 dated 25/02/2015 is merely 'change in opinion'. The action of the Ld. Assessing Officer u/s 148 of the Income Tax Act, 1961 was wholly unreasonable, uncalled for and bad in law.

5. That the levy of interest under section 234A/B/C and 234D is erroneous and deserves to be deleted.

6. That the intention of penalty proceedings us 271(1)(c) are bad in law and not sustainable in law under the facts and circumstances of the case in so far as there was neither any willful concealment of income nor did the appellant furnish inaccurate particulars on income.

4. Brief facts of the case:- The only effective ground in the appeal is with respect to the denial of exemption claimed by the assessee u/s 10(26BBB) of the Income Tax Act, 1961 (hereinafter referred as 'the Act'). The Assessing Officer reopened the assessment vide notice

dated 22.01.2015 as the assessee had failed to submit its return of income for this assessment year. The Assessing Officer after considering the submission of the assessee denied the exemption claimed by the assessee under same section. The relevant extract of the discussion made by the Assessing Officer in the assessment order in paras 4 to 14 are reproduced as under:-

“4. Vide order sheet entry dated on 18.02.2015, assessee was again asked to submit complete reply to the queries as per notice u/s 142(1) of the I.T. Act, 1961. Assessee failed to submit further reply to such notice. No bifurcation regarding working of income attributable to services rendered to persons to ex-serviceman and their dependents and other than ex-serviceman and their dependent has been given separately.

5. The written submissions filed by the assessee, Memorandum of Association and the case laws cited by it have carefully been gone through and the case has been discussed with the Authorized Representative of the assessee. The main issue involved in this case is with regard to the deduction u/s 10(26BBB) of the I.T. Act 1961.

6. According to section 10(26BBB) of the I.T. Act, the following income is not to be included in total income:

"Any income of a corporation established by a Central, State or Provincial Act for the welfare and economic upliftment of ex-servicemen being the citizens of India'.

The following explanation follows the provision:

For the purposes of this clause, "ex-servicemen means a persons who has served in any rank, whether as combatant or non-combatant in the armed forces of the union or armed force of the Indian states before the commencement of the constitution (but excluding the Assam Rifles, Defence Security Corps, General Reserve Engineering Force, Lok Sahayak Sena, Jammu Kashmir Militia and Territorial Army) for a continuous period of not less than six months after attestation and has been released, otherwise than by way of dismissal or discharge on account of misconduct or inefficiency and in the case of a deceased or incapacitated ex-serviceman includes his wife, children, father, mother, minor brother, widowed daughter and widowed sister wholly

dependent upon such ex-serviceman immediately before his death or incapacitation."

7. *The basic requirement of law is that the corporation should have been "established by Central, State or Provincial Act. The Corporation was not established by any such Act. It was incorporated as any other company under the provision of the Companies Act, 1956. It was incorporated on 01.03.2004 as 'Uttaranchal Purv Sainik Kalyan Udham Limited. Its name was changed to Uttarakhand Purv Sainik Kalyan Nigam Limited' on 31.01.2007. It is a State Government owned company but that is not enough. Since it was not "established by a Central, State or Provincial Act, it stands disqualified at the threshold itself for exemption u/s 10(26BBB).*

8. *The Explanation following the provisions makes it clear that the scope of the term "ex-serviceman" is restricted to" a person who has served in any rank, whether as combatant or non-combatant, in the armed forces of the Union or armed forces of the Indian States before the commencement of the Constitution". It will be important to mention here that a corporation established by the Central, State or Provincial Act would only be eligible for the exemption if it was established for the welfare and economics upliftment of such persons. There is nothing in the Memorandum of Association of the assessee to suggest that it is intended to serve such persons. Hence it falls on this count also.*

9. *The definition of 'ex-serviceman', for the purposes of the provision in question covers 'wife, children, Father, Mother Brother, Widowed Daughter and Widowed Sister' only in the case of a deceased or incapacitated ex-serviceman" and that also if they were "dependent upon such ex-serviceman immediately before his death or incapacitation'. There is no such restriction in the Memorandum of the assessee corporation.*

10. *It is also noted that, even though its main object is to "provide employment/self-employment to the ex-servicemen and their dependencies', the main object itself contains the narration that employment may be provided to "other than dependents' for the sake of continuity or in the case of non-availability of such ex-serviceman / their dependents. This shows clearly that, while the corporation would work primarily for the benefit of ex-servicemen or their dependents, it is free to provide employment to other also.*

11. *From the above discussion, it is clear that the assessee does not fulfill the requirement of section 10(26BBB) in any manner. It is settled law that exemption from taxation is an exception to the general rule of taxation and a person claiming the same has to show that he satisfies all the conditions that*

are attached to the provision granting exemption. Further, the corporation should have been" established by a Central State or Provincial Act'

12. Assessee also relied upon the decision on the judgement of Hon'ble Allahabad High Court in the case of Commissioner of Income Tax vs. Harijan Evam Nirbal Varg Avas Nigam [1997] 226 ITR 696. The facts of the case relied upon by the assessee are quite distinguishable from the present case. In the case relied upon by the assessee, the issue involved was allowability of exemption u/s 10(26B) whereas in the present case the issue is with regard to allowability of exemption u/s 10(26BBB). Secondly, in the case relied upon by the assessee, it was held by the Hon'ble Allahabad High Court that income attributed to the housing schemes executed for promoting the members of the Scheduled Castes only would be entitled to exemption, provided that was severable from the income accruing to the assessee from other main objects. In the present case, the issue is with regard to the exemption of income of a corporation established by a Central, State of Provincial Act for the welfare and the economic upliftment of ex-servicemen being the citizens of India which is specifically provided in section 10(26BBB) and claimed by the assessee in its return of income. Thirdly, the issue involved in the present case is whether the assessee corporation was "established by a Central, State of Provincial Act' and is eligible u/s 10(26BBB) ? which was not the subject matter of the case relied upon by the assessee. Therefore, the above cited case relied upon by the assessee is not applicable to the present case.

13. Assessee also submitted that with a view to encourage welfare activities for ex-servicemen, income of the Corporation established by a Central Act or any state Act, for the welfare and economics upliftment of the ex-services, was exempted from payment of Income Tax by the Finance Act, 2003. The Central Board of Direct Taxes (CBDT), vide its notification No. F.No. 275/50/2006-11 (B) dated August 1, 2008 has also exempted this Corporation from the provisions of TDS for a period of five years from 2009-10, issued u/s 119(1) of IT Act, 1961. This submission of the assessee has also no relevance with regard to the claiming of deduction u/s 10(26BBB) of the I.T. Act, 1961 as provisions of deduction of tax at source are quite separate provisions under the I.T. Act, 1961 for which assessee corporation has been exempted vide notification F.No. 275/50/2006- IT(B) dated August 1, 2008 of the CBDT.

14. In view of the above discussion, exemption u/s 10(26BBB) of the I.T. Act is disallowed and assessment is completed on total income of Rs.6,79,59,986/-accordingly. Issue notice of demand. Charge interest u/s 234A/B/C. Give credit for prepaid taxes. Penalty proceedings u/s 271(1)(c) of the I.T. Act,

1961 are being initiated separately for concealment/furnishing inaccurate particulars of its income.”

5. Aggrieved with the said order, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) Muzaffarnagar, who vide his order dated 22.11.2016 upheld the action of the Assessing Officer respectfully following the decision of the ld. CIT(A), Dehradun in assessee's own case for AYs 2011-12 and 2012-13 by stating that the facts for the present year was same as for AYs 2011-12 and 2012-13.

6. Against the above order, the assessee is in appeal before us.

7. During the course of hearing Ld. AR submitted that on identical issue for Asst. Year 2010-11 the Tribunal has dismissed assessee's appeal in ITA No. 2622/DEL/2015 against which the assessee has filed an appeal before the Hon'ble Uttrakhand High Court. He further submitted that Hon'ble Uttrakhand High Court has admitted the appeal by an order dated 19.10.2020 and framed substantial question of law in ITA No.15 of 2019. Further, the Ld. AR referred to Form No. 8, declaration filed under section 158A of the ITAT Act, 1961 and submitted that the appeal may be decided in view of the prayer made in the said application filed vide letter submitted on 03.01.2025 before the Tribunal.

8. The Ld. Sr. DR relied upon the order of the authorities below.

9. We have considered the rival submissions and perused the material available on record. As submitted by the ld. AR on the same facts, the Co-ordinate Bench of the Tribunal in assessee's own case had denied the claim of exemption u/s 10(26BBB) of the Act. Further, as submitted by the ld. AR against the above order of the Tribunal for AY 2010-11, the assessee filed an appeal before the Hon'ble Uttarakhand High Court vide ITA No.15 of 2019, wherein, following substantial question of law has been admitted by an order dated 19.10.2020.

“Shri Pulak Raj Mullick, learned counsel appearing for the appellant. Shri Hari Mohan Bhatia, learned counsel for the respondent. Misc. applications (IA Nos. 9207/19 and 9954/19) with counter and rejoinder affidavits are taken on record. Urgency application (IA No.10128 of 2020) stands disposed off.

Heard learned counsels.

The following substantial questions of law arise for consideration:-

“1. Whether the Ld. ITAT, committed a manifest error of fact and law in upholding the judgment and order dated 04.03.2015, passed by the Ld. CIT, Dehradun in so far as not appreciating that the twin tests of the order being of an erroneous nature and of its being prejudicial to the interests of Revenue were not satisfied?

2. Whether the Ld. ITAT, committed a manifest error of fact and law, in not appreciating that it was settled law that a Government Corporation, incorporated under the Companies Act,1956 that if the words “by and under an Act” are proceeded by the word “established” u/s 10(26BBB) then the special categories of companies,

including a Government company, would fall in the category of the word “establishment” and whether the said Government company would be eligible to the benefit of section 10(26BBB) or not?

Hence, admit.

So far as stay application is concerned, the plea of the assessee before the tribunal has been dismissed. Hence, there cannot be a stay of the said order. Therefore, the stay application (CLMA No.8059/19), being misconceived, is dismissed.”

9.1. Respectfully following the order of the Tribunal and in view of identical facts for the present Assessment Year also, the assessee’s claim for exemption u/s 10(26BBB) is rejected by the AO is confirmed. Further, in view of Form No.8 declaration filed u/s 158A of the Act by the assessee, the assessee/the AO after receipt of the order of the Hon’ble Uttarakhand High Court in the aforesaid ITA no.15 of 2019 in assessee’s own case may furnish suitable application in terms of section 158A(5) of the Act and as per the procedure laid down in section 158A of the Act. In view of the above facts, the appeal of the assessee is dismissed with the above directions.

9.2. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 19th March, 2025.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Dated 19.03.2025.

Shekhar

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Copy forwarded to:

1. Assessee
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi,