

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH**

BEFORE SHRI INTURI RAMA RAO, AM

**ITA No. 760/Coch/2025
Assessment Year: 2020-21**

Jily Mathew Appellant
XVIII/229C Anthiyalumkal, Convent Road
Tripunithura, Ernakulam 682301
[PAN: ABDPM4915G]

vs.

ITO, Corporate Ward - 2(5), Kochi Respondent

Assessee by: Shri. S. Venugopal, CA
Revenue by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 06.11.2025
Date of Pronouncement: 21.11.2025

ORDER

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 27.08.2025 for Assessment Year (AY) 2020-21.

2. Brief facts of the case are that the appellant is an individual deriving income under the head "Salary". She was employed with BSNL. The appellant had filed the return of income for AY 2020-21 on 29.10.2020 declaring total income of Rs. 34,77,620/-. The same was revised on 31.03.2021 at total income of Rs. 26,47,550/-. Against the said return of income, the assessment was completed by the Assessment Unit of Income Tax Department (hereinafter called

"the AO") vide order dated 29.08.2022 passed u/s. 143(3) r.w.s. 144B of the Income Tax Act, 1961 (the Act) at total income of Rs. 37,41,300/-. While doing so, the AO restricted the claim in respect of leave encashment u/s. 10(10AA) of the Act to Rs. 3,00,000/- as against the total claim of Rs. 13,93,746/- by holding that exemption u/s. 10(10AA) of the Act is restricted to Rs. 3,00,000/- as the appellant cannot be treated as employee of Central Government placing reliance on the decision of the Hon'ble Delhi High Court dated 08.11.2019.

3. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order confirmed the action of the AO.

4. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

5. I heard the rival contentions and perused the material available on record. The only issue arises for my consideration is whether the CIT(A) is justified in confirming the action of the AO restricting the claim in respect of leave encashment u/s. 10(10AA) of the Act to Rs. 3,00,000/- as against the total claim of Rs. 13,93,746/- by holding that exemption u/s. 10(10AA) of the Act is restricted to Rs. 3,00,000/- as the appellant cannot be treated as employee of Central Government. Similar issue came up for consideration of the Bengaluru Bench of this Tribunal in the case of National Dairy Research Institute [2018] 94 taxmann.com 19

(Bengaluru (Trib)), wherein the coordinate bench decided the issue against the assessee by holding as under: -

“7. We heard rival submissions and perused material on record. The only issue in the present case is, for the purpose of valuing perquisites of the accommodation, provided to employees of the assessee society should be done under clause (i) or clause (ii) of table 1 of rule 3 of the Income-tax rules 1962. Clause (i) of sub-rule (1) of rule 3 of Income-tax Rules is applicable in case of employees of Central Government or State Government. Clause (ii) of sub-rule (1) of rule 3 of Income-tax Rules is applicable in case of other than Central and State Government employees. Therefore, the issue which requires to be adjudicated is whether the employees of assessee-society are employees of Central Government or not. Needless to say that once the employees of the society are treated as employees of the Central Government for the purpose of evaluating perquisites of rent free accommodation, rules prescribed under clause (i) of sub-rule (1) of rule 3 of Income Tax rules are to be adopted. Otherwise clause (ii) of sub-rule (1) of rule 3 of IT Rules is to be adopted. An identical issue had come before the co-ordinate bench of this Tribunal in the case of Central Food Technology Research Institute (supra) wherein this Tribunal took a view that the employees of the corporation fully controlled by the Central Government cannot be equated with Central Government employees though it is instrumentality of the State within the meaning of Article 12 of the Constitution of India.

'10. We are of the view that the reliance placed by the learned counsel for the Assessee on the aforesaid decision is of any help to the present case. The question in the case of Pradeep Kumar Biswal (supra) was regarding as to whether CSIR is "State" within the meaning of Article 12 of the Constitution of India. As by the learned DR before us, the meaning of the word "State" has been defined in Article 12 of the

Constitution of India and the decision has to be confined to those cases and cannot extend to interpretation of Rule 3 of the IT Rules, 1962. Public corporations are established by Government to achieve purpose of welfare state. Financial autonomy and functional autonomy are required for such purpose. These corporations are commercial corporations, development corporations, social services corporations or Financial corporations. Such corporations have all trappings of Government but their, employees cannot be equated with employees either holding office or post in connection with the affairs of the Union or of such State. Eminent Author Seervai in his book Constitutional Law of India, 1984 Vol II pp. 2578-79 has deduced the following principles with regard to the status of employees of a statutory corporation —

- (i) a statutory corporation has a separate and independent existence and is a different entity from the Union or the State Government with its own property and its own fund and the employees of the corporation do not hold civil post under the Union or the State;*
- (ii) makes little difference in this respect, whether the Union or the State holds the majority share of the Corporation and controls its administration by policy directives or otherwise;*
- (iii) it also makes little difference if such a statutory corporation imitates or adopts the Fundamental Rules to govern the service conditions of its employees;*
- (iv) although the ownership, control and management of the stator corporation may be, in fact, vested in the Union or State, yet in the eye of law the corporation is its own master and is a separate entity and its employees do not hold any civil post under the Union or the State;*

if, however, the State or the Union controls a post under a stator corporation in such a manner that it can create or abolish the post or can regulate the conditions subject to which the post is or will be held and if the Union or the State pays the holder the post out of its own funds, then although the post carries the name of an office of the statutory corporation, it may be a civil post under the State or the Union.

11. We are of the view that in the light of the law on Rule 3 of the IT Rules, 1962 as understood by the Hon'ble Supreme Court in the case of Arun Kumar (supra) and the background in which Rule 3 was enacted w.e.f. 1-4-2001 as explained in the CBDT Circular referred earlier, we are of the view that the applicable rule in the case of the assessee for the purpose of computing perquisite value would be SL. No.2 of Table- I of Rule 3 of the IT Rules, 1962. Accordingly, we uphold the order of the CIT(A) and dismiss appeals by the Assessee.

12. In view of the fact that the appeals are decided, the petitions seeking stay of recovery of outstanding demand have become infructuous. Accordingly the stay petitions are dismissed as infructuous.

7. However the issue has not been examined by the authorities below from the angle of bona fide estimate made by the assessee while valuing the perquisite. The Tribunal in the case of uSC v. DCIT dt.27.2.2015 (supra) has dealt with this issue in para 19 as under:

"19. We have considered the rival submissions. In our view, the plea of the assessee that it made a bona fide estimate of employees salary by valuing the perquisites in the form of residential accommodation provided to the employees by valuing the same as if employees were employees of Central Govt. has to be accepted. In this regard it is clear from the records that the position with regard to the assessee not being a Central Govt. was brought to its notice by the department only in the proceedings initiated in 2013. Even thereafter the

assessee has been taking a stand that its employees are employees of Central Govt. As held in several decisions referred to by the ld. Counsel for the assessee, the obligation of the assessee is only to make a bona fide estimate of the salary. In our view, in the facts and circumstances of the present case, assessee has made such an estimate. The assessee's obligation u/s. 192 is therefore properly discharged and hence proceedings 201(1) & 201(1A) of the Act have to be quashed and are hereby quashed."

This decision was again followed by the Tribunal in the case of ACIT v. IISC for the Assessment Year 2011-12 vide order dt.11.8.2016. We further note that it is not a fresh issue raised by the assessee but it is only a plea in respect of the same subject matter and issue of deduction of TDS in respect of the accommodation provided to the employees. Therefore in the facts and circumstances and in view of the decisions of the Tribunal, we set aside this issue to the record of the Assessing Officer to examine the matter in the light of the decisions as relied upon by the assessee as well as by the department.'

8. This decision was followed by this Tribunal again in the case of Central Silk Board (supra) to which one of the Members viz., the Honorable Accountant Member is a party. Thus having regard to the ratio laid down in the above decision, we hold that the employees of the society cannot be equated with the employees of the Central Government, therefore, we hold that the TDS officer is right in applying clause (ii) of sub-rule (1) of rule 3 of Income-tax Rules. Accordingly the grounds of appeal raised in this behalf are dismissed."

Respectfully following the decision of the coordinate bench of this Tribunal, I hold that the assessee is not entitled for deduction u/s. 10(10AA) of the Act on account leave encashment, as the appellant cannot be treated as a central government servant. Thus, I do not find any merit in the appeal filed by the assessee.

6. In the result, the appeal filed by the assessee stands dismissed.

Order pronounced in the open court on 21st November, 2025.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 21st November, 2025

n.p.

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2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
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Assistant Registrar
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