

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : SMC-I : NEW DELHI
BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER

ITA No.1307/Del/2016
Assessment Year : 2010-11

Ram Kanwar Rana,
H.No.233,
Sector 15A,
Hisar.
PAN: AAVPR2697H

Vs. ITO,
Ward-3,
Hisar.

(Appellant)

(Respondent)

Assessee By : Shri Ankit Gupta, CA
Department By : Shri V.R. Sonbhadra, Sr. DR

Date of Hearing : 15.06.2016
Date of Pronouncement : 16.06.2016

ORDER

This appeal filed by the assessee is directed against the order passed by the CIT(A) on 23.12.2015 in relation to the assessment year 2010-11.

2. The only issue pressed by the ld. AR in this appeal is against the denial of exemption in respect of the amount received by the assessee towards arrears of gratuity at Rs.6,50,000/- and arrears of leave encashment amounting to Rs.1,88,720/-.

3. Briefly stated, the facts of the case are that the assessee was an employee of Chaudhary Charan Singh Haryana Agricultural University, Hisar (hereinafter called CCSU) and retired from service in April, 2008. Return for the previous year relevant to the assessment year under consideration declaring total income of Rs.2,50,410/- was filed, which was processed u/s 143(1) of the Act. The AO initiated re-assessment proceedings on the premise that the assessee had wrongly claimed exemption u/s 10(10) in respect of the arrears of gratuity and arrears of leave encashment. He observed that gratuity and leave encashment were exempt up to the limit of Rs.3,50,000/- and Rs.3 lac, respectively, in the case of the assessee, which limit stood exhausted in the earlier year at the time of their receipt. He further noticed that exemption limit was enhanced to Rs.10 lac for the persons retiring from service on or after

24.5.2010. Since the assessee retired before this cut-off date, the AO opined that the extended benefit of exemption was not available to the assessee. He jettisoned the claim of the assessee for exemption u/s 10(10) of the Act and held that the correct sections applicable were 10(10)(iii) and section 10(10AA)(ii). Since the assessee was an employee of CCSU, the AO held that such employees could not be termed as Government employees and, hence, the benefit u/s 10(10)(i) was not available to the assessee. Resultantly, he made addition towards the amount of arrears of gratuity received at Rs.6,50,000/- and the amount of arrears of leave encashment received of Rs.1,88,720/-. The Id. CIT(A) echoed the view taken by the AO that the assessee was not a 'holder of civil post under the State Government' and hence not eligible for exemption u/s 10(10)(i). Further, the assessee was held to be not covered u/s 10(10)(ii) as he did not receive any gratuity under the Payment of Gratuity Act, 1972. That is how, he held that the employees of the CCSU were covered u/s 10(10)(iii) of the Act, for which there is a limit on the exempt gratuity amount, which stood exhausted by the assessee in earlier year. Since the assessee was employed before

24.5.2010, the Notification issued by the CBDT enhancing the limit of Rs.10 lac on gratuity u/s 10(10)(iii) was held to be not applicable. The assessee is aggrieved against the confirmation of denial of exemption made by the Id. CIT(A).

4. I have heard the rival submissions and perused the relevant material on record. The controversy in this appeal can be viewed separately in respect of receipt of gratuity amount and leave encashment. In so far as the addition on account of gratuity received by the assessee amounting to Rs.6,50,000/- is concerned, it is found that the case of the assessee is that this amount falls u/s 10(10)(i) of the Act. On the contrary, the Revenue has treated it as a case falling u/s 10(10)(iii). In order to appreciate the rival contentions in right perspective, it will be apposite to set out the relevant parts of section 10, as under :-

“(10) (i) any death-*cum*-retirement gratuity received under the revised Pension Rules of the Central Government or, as the case may be, the Central Civil Services (Pension) Rules, 1972, or under any similar scheme applicable to the members of the civil services of the Union or holders of posts connected with defence or of civil posts under the Union (such members or holders being persons not governed by the said Rules) or to the members of the all-India services or to the members of the civil services of a State or *holders of civil posts under a State* or to the employees of a local authority or any payment of

retiring gratuity received under the Pension Code or Regulations applicable to the members of the defence services ;

(ii).....

(iii) any other gratuity received by an employee on his retirement or on his becoming incapacitated prior to such retirement or on termination of his employment, or any gratuity received by his widow, children or dependants on his death, *to the extent it does not, in either case, exceed one-half month's salary for each year of completed service, calculated on the basis of the average salary for the ten months immediately preceding the month in which any such event occurs, subject to such limit as the Central Government may, by notification in the Official Gazette, specify in this behalf having regard to the limit applicable in this behalf to the employees of that Government :*

.....

Provided further that where any such gratuity or gratuities was or were received in any one or more earlier previous years also and the whole or any part of the amount of such gratuity or gratuities was not included in the total income of the assessee of such previous year or years, the amount exempt from income-tax under this clause shall not exceed the limit so specified as reduced by the amount or, as the case may be, the aggregate amount not included in the total income of any such previous year or years.'

5. A careful perusal of the above provision indicates that if a case falls under clause (i) of section 10(10), the entire amount of death-cum-retirement gratuity becomes exempt. *Au contraire*, if a case falls under sub-clause (iii) of section 10(10), then, the exemption is limited to the amount as the Central Government may notify in official gazette. It is an accepted position that the Notification u/s 10(10)(iii) issued on

24.5.2010 raised the ceiling of exemption from Rs.3,50,000/- to Rs.10 lac. Since the original amount was received by the assessee during the currency of an earlier year on his retirement, the exemption limit prevalent at that time at Rs.3,50,000/- was used by the assessee. It is nobody's case that the extended limit of exemption can be applied to the assessee, because of his retirement which took place much before the cut-off date. To be more specific, the question is as to whether the extant case falls under clause (i) or clause (iii) of section 10(10). If a case does not fall under clause (i), it will automatically go to clause (iii). On a specific query from the Bench, the Id. AR submitted that the case of the assessee should be considered under sub-clause (i) of section 10(10) as a 'holder of civil post under a State.' In order to construe any person as a holder of civil post under a State, two requirements must be fulfilled viz., first that the employee should be holding a civil post and, second, such civil post must be under a State.

6. The first condition is that the employee should be holding a civil post. The assessee was appointed as a Research Assistant in December,

1971, who eventually rose to the post of Head of Department, Plant Breeding Department at the time of his retirement. Page 32 of the paper book is copy of the assessee's Pension Payment Order, which depicts the assessee's designation as Sr. Scientist, Department of Plant Breeding. On the 'Pensioner's Portion' of this document, there is a reference to Rule 10, 11 and note thereunder of Civil Services Rules (CSR) V.II. As the assessee's pension has been computed under Civil Services Rule, it goes to show that the assessee was holding a 'civil post' at the time of his retirement. No other contrary material has been placed on record by the Id. DR to show that the assessee was holding a post other than civil post.

7. The second requirement is that such civil post must be under a State. Page 20 of the paper book is a copy of Haryana and Punjab Agricultural University Act, 1970, which was passed by the Parliament and received the assent of the President on 2nd April, 1970. Under this Act of Parliament, two independent agricultural universities in place of the hitherto Punjab Agricultural University, were established. Section 5

of this Act sets out the name of CCSU as the agricultural university to function within the territories of State of Haryana. This proves that the CCSU was established by an Act of Parliament. Page 29 of the paper book is a document which shows that the assessee is a State University covered under University Grants Commission (UGC). It is undisputed that the entire funding of the CCSU is done by the State Government. Page 25 is a copy of Notification issued by the Haryana Government increasing the maximum limit of death-cum-retirement gratuity at Rs.10 lac, under which the assessee has received the arrears of retirement gratuity under this scheme only. The above facts amply demonstrate that CCSU is covered under the expression 'State.' This is further corroborated from Article 12 of the Constitution of India which states that: 'In this part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the legislature of each of the States either local or other authorities within the territory of India or under the control of the Government of India.' The expression 'other authorities' has been interpreted in Umesh v. Singh A 1967 Pat. 3(9) F.B. as including: 'a Board, a University, the

Chief Justice of a High Court, having the power to issue rules, bylaws or regulations having the force of law.’ The above discussion manifests that CCSU is covered within the meaning of ‘State’.

8. As the assessee is found to be an employee holding a civil post under a State, in my considered opinion, the provisions of section 10(10)(i) are fully attracted in this case entitling him to exemption for the amount under consideration. Once a case falls under clause (i) of section 10(10), the same cannot be brought within the purview of clause (iii) of section 10(10). I, therefore, hold that the assessee is entitled to exemption u/s 10(10)(i) in respect of gratuity amount received in total upto Rs.10 lac, which covers a sum of Rs.6,50,000/- received during the year. Overturning the impugned order on this score, I allow exemption u/s 10(10)(i) to the arrears of gratuity received by the assessee at Rs.6,50,000/- during the instant year.

9. As regards the second amount of Rs.1,88,720/- received by the assessee during the year towards the arrears of leave encashment, it is noticed that the assessee claimed exemption u/s 10(10AA)(i) which was

refused by the AO by holding the case to be covered under sub-clause (ii) of section 10(10AA). The Id. CIT(A) affirmed the view taken by the AO on this point, thereby denying the benefit of exemption in respect of the arrears of leave encashment received during the year.

10. I have heard the rival submissions and perused the relevant material on record. The Id. AR submitted that there is not much difference in the language of section 10(10)(i) and 10(10AA)(i) and the view taken in respect of arrears of gratuity u/s 10(10) should be followed for arrears of leave encashment u/s 10(10AA). The Id. DR supported this proposition. As both the sides are consensus ad idem on the position that the view taken in the context of section 10(10) as applicable to leave gratuity be followed here in the context of section 10(10AA) in the context of leave encashment, I am desisting from independently examining the later provision. In view of the fact that I have held the assessee to be entitled to exemption u/s 10(10)(i) in respect of arrears of gratuity, following the same, I extend the benefit of

exemption u/s 10(10AA)(i) in respect of arrears of leave encashment.

This ground is allowed.

11. The ld. DR did not seriously press the ground challenging the initiation of re-assessment. The same is, therefore, dismissed.

12. In the result, the appeal is partly allowed.

The order pronounced in the open court on 16.06.2016.

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, 16th June, 2016.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.