

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-1', NEW DELHI**

Before Sh. N. K. Saini, Accountant Member

ITA No. 2180/Del/2016 : Asstt. Year : 2010-11

Manohar Lal Batra, H. No. 1613, Sector-13, Hisar, Haryana	Vs	Income Tax Officer, Ward-2, Hisar
(APPELLANT)		(RESPONDENT)
PAN No. AAWPB5323P		

**Assessee by : Sh. Kuldeep Khera, CA
Revenue by : Sh. F. R. Meena, Sr. DR**

Date of Hearing : 22.09.2016	Date of Pronouncement : 28.09.2016
-------------------------------------	---

ORDER

This is an appeal by the assessee against the order dated 28.01.2016 of Id. CIT(A), Hisar.

2. The only grievance of the assessee in this appeal relates to the denial of exemption u/s 10(10) of the Income Tax Act, 1961 (hereinafter referred to as the Act) out of the amount received by the assessee towards arrear of gratuity to the extent of Rs.6,50,000/-.

3. Facts of the case in brief are that the assessee was an employee of Choudhary Charan Singh, Haryana Agricultural University, Hisar and received arrear of Death cum retirement gratuity of Rs.6,50,000/-. The assessee filed the return of

income on 30.07.2010 declaring an income of Rs.9,68,600/-. Thereafter, the assessee revised the return of income on 15.09.2011 declaring total income of Rs.3,18,600/- which was processed u/s 143(1) of the Act on the returned income. The AO observed that the assessee in the computation of total income annexed with the return of income, details of receipt of arrears of gratuity and the detailed note on payment of Gratuity, Leave Encashment and LTC etc. The AO did not allow the claim of the assessee for exemption of Rs.10,00,000/- received on account of gratuity and restricted the same to Rs.3,50,000/-. Accordingly, the income was assessed at Rs.9,68,600/- by observing as under:

“In view of the finding given in the foregoing paras, the employee of the CCS HAU cannot be termed as Govt. employee as neither they are under the control of Haryana Govt. nor their pay is debited to the consolidated funds of the state. Application of CSR Vol. II does not confer vice-versa status as Govt. employee under any rule/authority as claimed by the assessee. Hence, it is clear that university employees are covered u/s 10(10)(iii) of the Income-tax Act, 1961 because neither sec. 10(10)(ii) applies as they are not receiving gratuity under the payment of gratuity Act 1972 nor from the gratuity funds mentioned u/s 10(10)(i) of the Act. In view of these facts, the exemption allowable to the assessee in respect of gratuity and leave encashment is only Rs.3.5 lacs and Rs.3,00,000/- respectively which has

already been claimed/ allowed. Thus, the claim of the assessee for exemption of gratuity received in arrear of Rs. 6,50,000/- is not in order and is added back to the income of the assessee.

Penalty proceedings u/s 271(1)(c) are initiated for furnishing of inaccurate particular of its income.

In view of the discussion in the foregoing paras income of the assessee is computed as under –

<i>Returned income</i>	<i>: Rs.3,18,600/-</i>
<i>Addition on account of gratuity as discussed above</i>	<i>: Rs. 6.50.000/-</i>
<i>Assessed Income</i>	<i>: Rs.9,68,600/-</i>

Charge interest u/s 234B of the Income Tax Act, 1961 withdraw interest u/s 244A(3), if any.

Issue penalty notice u/s 271(1)(c) of the Income Tax Act,1961.”

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) who sustained the addition made by the AO by observing in para 5.10 of the impugned order as under:

“5.10 Considering the above discussion I hold that employees of University are not holders of civil post under a state and are not eligible for exemption u/s. 10(10)(i) of Income Tax Act. They are not covered by Section 10(10)(ii) as they are not receiving gratuity under the payment of gratuity Act, 1972. Hence, employees of the University are covered U/s. 10(10)(iii) of I.T. Act for which there is limit on the gratuity amount allowable. CBDT has approved the

notification of Rs. 10 lakhs on the maximum amount of gratuity u/s. 10(10)(iii) of Income Tax Act vide its notification no 43/2010 dated 11.06.2010. This notification is applicable to employees who retire on or after 24.05.2010. Before 24.05.2010 the exemption u/s. 10(10)(ii) was restricted to Rs. 3,50,000/-. Therefore, I hold that the appellant who retired before 24.05.2010 is eligible for exemption on gratuity to the extent of Rs. 3,50,000/- only. The additions made by AO of Rs. 6,50,000/- on account of excess claim of gratuity are upheld. The appeal on this ground is dismissed.”

5. Now the assessee is in appeal. The Id. Counsel for the assessee at the very outset stated that the issue under consideration has already been decided by the various benches of the ITAT New Delhi in favour of the assessee wherein identical facts were involved. He furnished the copies of the following orders:

- *Sh. Ram Kanwar Rana Vs ITO, Ward-3, Hisar in ITA No. 1307/Del/2016 dated 16.06.2016*
- *Sh. Raghbir Singh Panghal Vs ITO, Ward-3, Hisar in ITA No. 1308/Del/2016 dated 16.06.2016*
- *Sh. Joginder Paul Bhanot Vs ITO, Ward-2, Hisar in ITA No.1219/Del/2016 dated 19.07.2016*
- *Sh. Bhupendra Kumar Nehra Vs ITO, Ward-1, Hisar in ITA No. 1222/Del/2016 dated 20.07.2016*
- *Sh. Ram Dhari Rana Vs ITO, Ward-3, Hisar in ITA No. 1360/Del/2016 dated 10.08.2016*
- *Sh. Anant Kumar Gupta Vs ITO, Ward-1, Hisar in ITA No. 1361/Del/2016 dated 10.08.2016*

6. In his rival submissions the ld. DR supported the orders of the authorities below.

7. I have considered the submissions of both the parties and perused the material available on the record. It is noticed that an identical issue having similar facts has already been adjudicated by the ITAT Delhi Benches, ÷SMC-1ø, New Delhi in ITA No. 1307/Del/2016 for the assessment year 2010-11 in the case of Ram Kanwar Rana Vs ITO, Ward-3, Hisar, wherein the relevant findings have been given in paras 4 to 8 of the order dated 16.06.2016 which read as under:

“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 ld. 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 ld. 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."

8. Since the facts of the assessee's case are identical to the facts involved in the aforesaid referred to case of Sh. Ram Kanwar Rana. So, respectfully following the order dated 16.06.2016 in the case of Ram Kanwar Rana Vs ITO (supra), the impugned order is set aside and the AO is directed to allow the claim of the assessee on account of gratuity.

9. In the result, appeal of the assessee is allowed.

(Order Pronounced in the Court on 28/09/2016)

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 28/09/2016

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR