

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.2735/Del/2017
A Y 2011-12

Indra Kumari Bajaj through
L/h. Sh. Thakur Dass Bajaj
H. No. 48, Green Park,
Hisar-125001 (Haryana)

Vs Income Tax Officer, Ward-2,
Hisar

(Appellant)

(Respondent)

Appellant by :	Sh. Raj Kumar, Advocate
Respondent by:	Sh. S. N. Meena, Sr. DR
Date of Hearing	28/11/2019
Date of pronouncement	04/12/2019

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER

The appeal is filed by the assessee, against the order dated 29.01.2016 passed by the CIT(A), Hissar for A.Y. 2011-12.

2. The grounds of appeal are as under:

“On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming following action of the Assessing Officer in:

- i) initiating proceedings u/s 147 of the Income-tax Act, 1961 and completing assessment u/s 147/143(3) of the Act at an income of Rs.2067650/-against the returned income in a sum of Rs.968600/-;*

- ii) *initiating proceedings u/s 147 of the Act on the basis of change of opinion without there being any reason to believe that income has escaped assessment;*
- iii) *passing order u/s 147/143(3) of the Act without disposing of the objection to reopening by speaking order;*
- iv) *making an addition of Rs.6,50,000/- and Rs. 4,49,050/- on account of gratuity and Leave encashment received from the State Government after retirement by restricting the exemption claimed u/s 10(10)(i) and 10(10AA)(i) of the Act to Rs.3,50,000/-.”*

3. Return declaring an income of Rs. 13,13,930/- was filed on 29.07.2011 which was processed u/s 143(1) of the Income Tax Act, 1961 on the returned income. The assessee was employee of the Chaudhary Charan Singh Haryana Agricultural University, Hisar, a State University, established under 'The Haryana and Punjab Agricultural Universities Act, 1970' and notified under University Grants Commission. The assessee retired on 31.03.2010. After retirement during the assessment year 2011-12, the assessee received Gratuity amounting to Rs.6,50,000/- and Leave Encashment amounting to Rs. 449050/-, and claimed exemption u/s 10(10)(i) and 10(10AA)(i) of the Income tax Act, 1961. Gratuity and leave encashment amount was claimed exempt income in the return being State University and its employees are treated at par with the State Govt, employee for all purposes, as per section 10(10)(i) and 10(10AA)(i) of the Income tax Act, 1961. In response to notice u/s 148, appellant had submitted reply that original return already submitted be treated in response to notice u/s 148. Thereafter, notice was issued for

reassessment u/s 147/143(3) of the Income tax Act, 1961 and reassessment was made by the Assessing Officer vide order dated 30.01.2014. The Assessing Officer restricted the exemption on account of Gratuity and leave encashment u/s 10(10)(i) and 10(10AA)(i) of the Act and made the addition in the returned income as per detail given below:-

Returned Income	968600.00
Addition on account of Gratuity	650000.00
Addition on account of Leave encashment	<u>449050.00</u>
Total Income assessed	<u>2067650.00</u>

4. Being aggrieved by the Assessment Order, the assessee preferred appeal before the CIT(A). The appeal was dismissed on the ground that the assessee was an employee of Chaudhary Charan Singh Haryana Agricultural University, which is not a State Govt.

5. The Ld. AR submitted that the assessment was framed u/s 143(1) of the Income tax Act, 1961. No notice u/s 143(2) for assessment was issued within six months from the end of the assessment year. Thereafter, notice u/s 148 of the Income Tax Act, 1961 was issued on 03-10-2013 without service of copy of reasons initiated before proceedings u/s 147 of the Income tax Act, 1961. In response to notice u/s 148, the assessee had submitted reply that original return already submitted be treated in response to notice u/s 148. Thereafter, notice was issued for reassessment u/s 147/143(3) of the Income tax Act, 1961 and reassessment was made by the Assessing Officer vide order dated 30-01-2014. Gratuity and leave encashment amount was claimed exempt income in the return being State University and its employees are treated at par with the State Government, employee for all purposes, as per section

10(10)(i) and 10(10AA)(i) of the Income Tax Act, 1961. The assessee retired from service before 24.05.2010. The Ld. AR submitted that this issue is considered by the Tribunal in number of cases wherein the Tribunal has granted relief in favour of assesseees who were working in the Chaudhary Charan Singh Haryana Agricultural University, Hisar, a State University, established under 'The Haryana and Punjab Agricultural Universities Act, 1970' and notified under University Grants Commission. The Ld. AR relied upon the decision of the Tribunal in case of Ram Kanwar Rana vs. ITO being ITA No. 1307/Del/2016 order dated 16.06.2016.

6. The Ld. DR relied upon the order of the CIT(A) and the Assessment Order.

7. We have heard both the parties and perused all the relevant material available on record. As regards to Ground Nos. (i) to (iii) relating to initiation of reassessment proceedings is not pressed by the Ld. AR, hence dismissed. It is pertinent to note that the assessee was an employee of Chaudhary Charan Singh Haryana Agricultural University, Hisar, a State University, established under 'The Haryana and Punjab Agricultural Universities Act, 1970' and notified under University Grants Commission. The Tribunal in case of Ram Kanwar Rana (supra) held that the exemption u/s 10(10)(i) and 10(10AA)(i) of the Act are available to the assessee in respect of the arrears of gratuity and dismissed the grounds about the initiation of the re-assessment. Similar view has been taken in several decisions including Raghbir Singh Panghal vs. ITO in ITA No. 1308/Del/2016. As in the present case also the assessee is found to be an employee holding a civil post under a State, therefore, the provisions of Section 10(10)(i) of the Act are attracted in this case and the assessee is entitled to exemption 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. As regards the arrears of leave encashment, it is also on the same footing to that of exemption claimed under Section 10(10)(i). Therefore, the assessee is

entitled for the exemption claimed under Section 10(10)(i) and 10(10AA)(i) of the Act. The CIT(A) as well as the Assessing Officer was not right in disallowing the same. Thus, Ground No. (iv) is allowed.

8. In result, appeal of the assessee is partly allowed.

Order pronounced in the open court on this day of 4th December, 2019.

Sd/-

**(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 04/12/2019
Neha

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	27.11.2019
Date on which the typed draft is placed before the dictating Member	27.11.2019
Date on which the typed draft is placed before the Other member	04.12.2019
Date on which the approved draft comes to the Sr.PS/PS	04.12.2019
Date on which the fair order is placed before the Dictating Member for Pronouncement	04.12.2019
Date on which the fair order comes back to the Sr. PS/ PS	04.12.2019
Date on which the final order is uploaded on the website of ITAT	04.12.2019
Date on which the file goes to the Bench Clerk	04.12.2019
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	