

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 3620/DEL/2016
Assessment Year: 2011-12**

Chandan Lal Goswami, C/o A.A. & Co. CAs, 22, Green Park, Hisar-125001. PAN- AAUPG0664Q	<u>Vs</u>	Income-tax Officer, Ward-1, Hisar.
APPELLANT		RESPONDENT
Assessee represented by	Sh.Ankit Gupta, Adv.	
Department represented by	Sh. Baldev Singh Negi, Sr. DR	
Date of hearing	01.11.2023	
Date of pronouncement	06.11.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), Faridabad, dated 16.03.2016, pertaining to the A.Y. 2011-12. The assessee has raised following grounds of appeal:

- “ - That the worthy Commissioner of Income Tax (Appeals), Faridabad has grossly erred in law, facts and in principles of natural justice in passing the order u/s 250 of the Income Tax Act, 1961 in the instant case.*
- That the worthy Commissioner of Income Tax (Appeals), Faridabad, was not justified in confirming the order of the Ld. Income Tax Officer in the instant case by passing an ex parte Appellate Order.*
- That the worthy Commissioner of Income Tax (Appeals), Faridabad has not exercised her powers and applied his mind judiciously in the instant*

case as the appellant was not serviced the last notice sent by the worthy CIT(Appeals) and the appellant could not appear on the date of last hearing and moreover no such time barring issue was involved in the matter. The appellant could not furnish any written submissions during appellate proceedings and in the absence of same the worthy Commissioner of Income Tax (Appeals), Faridabad passed the ex parte order.

- *That the worthy Commissioner of Income Tax (Appeals), Faridabad has grossly erred in law and in facts while confirming the addition of Rs. 650000/- made by Ld. Assessing Officer on account of excess claim of gratuity u/s 10(10)(iii) of the Income Tax Act, 1961 by holding the view that the assessee is not a Govt Employee.*
- *That the worthy Commissioner of Income Tax (Appeals), Faridabad has grossly erred in law and in facts while confirming the addition of Rs. 208450/- made by Ld. Assessing Officer on account of excess claim of Leave Encashment u/s 10(10)(ii) of the Income Tax Act, 1961 by holding the view that the assessee is not a Govt Employee.*
- *That the worthy Commissioner of Income Tax (Appeals), Faridabad, was not justified in holding the view that the assessee is not a Govt Employee and accordingly the threshold limit of Gratuity and Leave Encashment are applicable to the assessee and hence amount in excess of exemption limit are taxable in the hands of the assessee whereas the assessee is of the opinion that looking to the facts of the case he should be treated as Govt Employee.*
- *That the Grounds of Appeal taken before the worthy Commissioner of Income Tax (Appeals), Faridabad may kindly be considered as Grounds of Appeal from Appellant before the Hon'ble Tribunal.*
- *That there are various judicial pronouncements of Hon'ble Apex and High Courts etc. in favour of the appellant in support of his grounds of appeal.*
- *That the appellant may be permitted to add/amend such other grounds as may be urged and reserves the right to raise any other grounds of appeal before or at the time of regular hearing of the appellate proceedings.*

2. The effective grounds in this appeal are related to the monetary limit for gratuity and leave encashment.”

3. At the outset it is stated by the learned counsel for the assessee that the issues are squarely covered by the decision of the Tribunal in ITA no. 1307/Del/2016 in the case of Ram Kanwar Rana Vs. ITO order dated 16.06.2016; and ITA no. 2180/Del/2016 in the case of Manohar Lal Batra Vs. ITO order dated 28.09.2016. He contended that both were the employees of the Hisar Agricultural University and the Hon’ble Coordinate Bench after considering the submissions have allowed the claim of the assessee.

4. On the other hand, learned DR submitted that the AO has relied upon the notification issued by the CBDT that the employees of University are not the employees of the State. Therefore, the monetary limit as available to the government employees would not be extended to the employees of the University.

5. In rejoinder the learned counsel for the assessee submitted that both these objections have been considered by the Coordinate Bench in the above referred appeals.

6. We have heard rival contentions and perused the material available on record. We find that identical issues were raised before the Tribunal in ITA no. 1307/Del/2016 (supra) and ITA no. 2180/Del/2016 (supra), wherein the Tribunal was pleased to decide the issues in favour of the assessee by holding as under:

“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.

6.1 There is no change in facts and circumstances. Since the facts are identical, we find no reason to deviate from the earlier decision of the Tribunal on the issues in question. Moreover, it is demonstrated that the CCS conduct rules are applicable to the employees of Hisar Agriculture University and they are treated at par with the Scientists of ICAR. Under these undisputed facts, there is no reason to take a different view in the matter. The AO is directed to delete the impugned addition. Grounds raised by the assessee are allowed.

7. Appeal of the assessee is allowed.

Order pronounced in open court on 6th November, 2023.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER
MP

Copy forwarded to:

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

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI