

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.887/PUN/2022  
निर्धारण वर्ष / Assessment Year : 2018-19

Shivaram Gopal Awate, Block No.304, A- Wing, Orchid Homes, E- Ward, Behind Circuit House, Karande Mala, Kolhapur- 416003. PAN : AAUPA8284A	Vs.	ITO, National e-Assessment Centre, Delhi.
Appellant		Respondent

Assessee by : None  
Revenue by : Smt. Sonal L. Sonkavde

Date of hearing : 11.04.2023  
Date of pronouncement : 11.04.2023

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

This is an appeal filed by the assessee against the order of the National Faceless Appeal Centre, Delhi ['NFAC'] dated 09.10.2022 for the assessment year 2018-19.

2. The brief facts of the case are that the appellant is an individual deriving income under the head "salaries". The Return of Income for the assessment year 2018-19 was filed on 23.07.2018 declaring total income of Rs.24,61,400/-. The same was revised on 18.08.2018 at total income of Rs.8,83,560/-. During the previous year relevant to the assessment year under consideration, the

appellant had retired from the services of Maharashtra State Electricity Transmission Company. Consequent to his retirement, the appellant had received Gratuity and Leave Encashment of Rs.25,81,460/- and Rs.12,96,380/- respectively. In the revised return of income, the appellant sought the exemption of the same u/s 10(10) and section 10(10AA) of the Income Tax Act, 1961 ('the Act') respectively. However, the Assessing Officer was of the opinion that the appellant is not an employee of the State Government or Central Government, accordingly, restricted the exemption to the extent of Rs.10,00,000/- u/s 10(10) of the Act. Similarly, in respect of amount received on account of Leave Encashment, the Assessing Officer restricted the exemption to the extent of Rs.3,00,000/- u/s 10(10AA) of the Act and, accordingly, made addition of Rs.25,79,317/-.

3. Being aggrieved by the above addition, an appeal was filed before the NFAC, who vide impugned order upheld the action of the Assessing Officer by holding that the employees of the State Government Undertaking cannot be treated as a State Government employee placing reliance on the decision of ITAT, Bangalore Bench in the case of Karnataka Power Transmission Ltd. vs. ITO in ITA No.2379 & 2380/Bang/2017 & Ors.

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

5. At the outset, there is a delay of 1 day in filing the present appeal. The appellant had filed a condonation petition seeking the condonation of delay on the ground that the delay is neither intentional nor wilful but due to good and sufficient reasons on account of delay Speed Post delivery.

6. I have carefully gone through the condonation petition and find that the delay of 1 day is caused by the postal authority. Therefore, I am of the considered opinion that it is a fit case for condonation of delay of 1 day.

7. I heard the ld. Sr. DR and perused the material on record. The issue that arises for consideration is whether an employee of the State Government Undertaking can be treated as employee of State Government. The issue is no longer *res integra*, as the Hon'ble Supreme Court in the case of Indian Institute of Science vs. DCIT, 446 ITR 418 (SC) held that though the State Government Undertaking may be considered as a State instrumentality within the definition of article 12 of the Constitution of India, the same cannot be treated as Central or State Government, consequently the employees of such undertakings cannot be treated as a Central or State Government employee. The Hon'ble Supreme Court had affirmed the decision of the Hon'ble Karnataka High Court in the case of Indian Institute of Science vs. DCIT, 140 taxmann.com 661 (Kar.). Therefore, in the light of this settled position of law, the

action of the Assessing Officer in restricting the exemption u/s 10(10) and section 10(10AA) of the Act to extent applicable to a non-State Government employee is correct in law and, therefore, I do not find any merits in the appeal filed by the assessee.

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

Order pronounced on this 11<sup>th</sup> day of April, 2023.

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 11<sup>th</sup> April, 2023.

*Sujeet*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.