

and not u/s 10(10AA)(i), as claimed by the Assessee. The Assessee claimed exemption of leave encashment of Rs. 18,13,500/-.

2. The facts are that the Assessee filed the Return of Income for the AY on 21.07.2018 by declaring income of Rs.11,59,150/-. While filing the Return of Income, the Assessee claimed exemption u/s 10(10AA)(i) of the Act. The Return was processed u/s 143(1) by CPC, Bengaluru and the assessee was granted refund along with interest of Rs. 2,05,790/- Subsequently, a Rectification Order- u/s 154 was passed by the AO-CPC, Bengaluru on 29.10.2021 by allowing the claim of exemption u/s 10(10AA)(ii) of the Act, as against the assessee's claim of exemption u/s 10(10AA)(i) of the Act.

3. The Assessee submitted before the Id. CIT(A) as follows:

1.1 *Brief facts of the case is that the Assessee had joined Himachal Pradesh State Electricity Board, a State Government Undertaking on 15th, June, 1983 as Assistant Engineer and retired on 30.04.2017 after putting in almost 34 years of service from Himachal Pradesh State Electricity Board Limited. The benefit of leave encashment was allowed for holidays to be availed not during the service period .*

1.2 *The Himachal Pradesh State Electricity Board was established in 1971, as a body constituted under Section 5 of the erstwhile Electricity (Supply) Act, 1948 and had been responsible for coordinated development of power potential, generation, transmission and distribution of electricity within the State of Himachal Pradesh.*

1.3 *Later on, "The Himachal Pradesh State Electricity Board" had been re-organized as "Himachal Pradesh State Electricity Board Limited" w.e.f. 14.06.10 under Companies Act 1956 vide notification No. MPP-A ((3)-1/2001-IV dated 10-*

06-2010 (copy enclosed).

1.4 The above said notification reads as under:

In exercise of Power under Section 131(2), 132, 133 and other enabling provisions of Electricity Act 2003, The Government of Himachal Pradesh (herein after called State Government), hereby makes the following "Transfer Scheme" for providing and giving effect to the transfer of functions, undertakings, assets, properties, rights, liabilities, obligations, proceedings and personnel's of erstwhile 'Himachal Pradesh State Electricity Board.

From the above said notification, it is amply clear that the State Government Undertaking 'HPSEB' had been transferred to the 'HPSEB Ltd'.

1.5 *In the present case, it is not in dispute that the assessee claimed the exemption u/s 10(10AA)(i) of the Act while the AO allowed exemption u/s 10(10AA)(ii) of the Act. In the instance case, it is an admitted fact that the assessee was earlier employee of the "Himachal Pradesh State Electricity Board" which later on had been re-organized as "Himachal State Electricity Board Limited", which adopted the Himachal Pradesh Government Instructions.*

1.6 *The Government of Himachal Pradesh (Department of MPP & Power) in its Notification No. MPP-A ((3)-1/2001-IV (copy enclosed) dated 10-06-2010 provided the conditions at the time of transfer of personnel in Clause 5(5) which read as under:*

" (5) All transferred employees from 'HPSEB' shall be employees of 'HPSEB Ltd.' and their rank, scale or pay and inter-se-seniority as existing in the Board on the effective date of Transfer shall be maintained and the retirement benefits and other facilities shall in no way be reduced or made inferior to that immediately before the effective date of re-vesting"

1.7 *From the above notification, it is clear that the employees who were transferred in the Himachal State Electricity Board Limited were the employees of Him*

achal Pradesh State Electricity Board i.e. State Government employees. As per the provisions contained in Section 10(10AA)(i) of the Act, the exemption was available for leave encashment received at time of superannuation, to the employees of the State or Central Government, therefore, the assessee was eligible for exemption u/s 10(10AA)(i) of the Act.

- 1.8 Keeping in view the above the assessee also filed his return of Income on 21/07/2018 by declaring income of Rs.1159150/- and while filing the return of Income assessee claimed exemption u/s 10(10AA)(i).
- 1.9 That, the return was processed under section 143(1) return of the assessee on 03/04/2019 as per the information given by the assessee and determined the Income Tax refund of Rs. 205789 including interest of Rs. 12558. However, on 29/10/2021 Ld. AO at CPC suo-moto passed the order under section 154 and made an addition of Rs. 1513500 after allowing exemption of Rs. 300000 under section 10(10AA)(ii) and thus raised a demand of Rs. 529760 (including refund already paid Rs. 205790).
- 1.10 However, the assessee was eligible for exemption u/s 10(10AA)(i) of the Act not under section 10(10AA)(ii). Even at the time of conversion of board into company there was around 300 days earned leaves in the credit of the employee and the same was un-availed at the time of retirement.
- 1.11 **That the assessing officer passed the order without giving any opportunity of being heard. Thus, the order passed by the Ld. AO is totally illegal and not sustainable in the eyes of law.**
- 1.2 That the leave encashment received by the assessee is totally exempt from tax and the same view had been expressed by the Hon'ble Jurisdictional ITAT and Hon'ble Jurisdictional CIT(A) Ludhiana (Camp at Panchkula) in the following cases:
 - a) Hon'ble ITAT Delhi's decision in case of Jagdeep Singh vs ITO, Ward -2, Hisar (copy of order attached)
 - b) Further the Jurisdictional Hon'ble CIT(A) Ludhiana Camp at Panchku

la decision in case of Jyoti Prasad Aggarwal vs AO (copy of order attached)

- c) *Jurisdictional Hon'ble CIT(A) Panchkula decision in case of Mahesh Singhal vs AO (copy of order attached)*

1.3 *Hence, as per above discussion, Assessee is to be considered as an State Government employee and accordingly the exemption from the taxability of leave encashment would be applicable as per provision of Section 10(10AA)(i) of the Income Tax Act, 1961.*

1.4 *As the said addition has been made just for the sake of making additions and that too on surmises and conjunctures, the same is not sustainable in the eyes of law and as such it is most respectfully prayed that the addition be quashed and this ground of appeal be allowed or any other order be passed which this Hon'ble Forum deems fit and proper in the facts and circumstances of the case be passed.*

2. **On legal Front**

.....
As per the provision section 10(10AA) of Income Tax 1961 the assessee shall be eligible for exemption least of the following amount

1. *any payment received by an employee of the Central Government or a State Government as the cash equivalent of the leave salary in respect of the period of earned leave at his credit at the time of his retirement [whether] on superannuation or otherwise ;*
2. *any payment of the nature referred to in sub-clause (i) received by an employee, other than an employee of the Central Government or a State Government, in respect of so much of the period of earned leave at his credit at the time of his retirement [whether] on superannuation or otherwise as does not exceed [ten] months, calculated on the basis of the average salary drawn by the employee during the period of ten months immediately preceding his retirement [whether] on superannuation or otherwise,*

[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.

However, as per the Notification No. SO 588(E), dated 31-5-2002 issued by the CBDT the amount of exemption has been notified Rs. 300000.

The limit has not been revised by the CBDT since 2002. However, as per the provision of the Act, the notification issued should have specified the limit keeping in regard the limit applicable to the employees of the govt.

The said notification has not been revised since 2002, however there has been huge increase in salary since that time. Keeping in view the same, the limit should have been computed accordingly however the same has not been done.

3. Keeping in view the above it is prayed that the same may kindly be deleted or any other relief be given which this Hon'ble forum deems fit and proper in the facts and circumstances of the case.

4. The Id. CIT(A), by virtue of the impugned order, confirmed the order dated 29.10.2021 passed by the A.O. u/s 154 of the Act, observing as follows:-

“4.3. The discrimination between government employees and non-government employees including employees of Public Sector Undertakings came up before the Hon'ble High Court of Madras in the case of K. Gopalakrishnan Vs. CBDT (1994) 206 ITR 193(Mad.) dated 21.4.1993 wherein the Hon'ble High Court after taking into consideration, the various aspects including the legislative intent held that, there is no substance in the contention of the appellant that Section 10(10) and 10(10AA) of the Income-tax Act are unconstitutional and void. Further, the Hon'ble High Court did not hesitate to hold that the classification found in the said Section is valid and based on sound reasoning.