

GAHC010108942023



2025:GAU-AS:5337-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/342/2023

THE UNION OF INDIA AND 3 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF
FINANCE , DEPARTMENT OF REVENUE , NORTH BLOCK,NEW DELHI-01.

2: THE COMMISSIONER OF INCOME TAX
AAYAKAR BHAWAN 3RD FLOOR G.S.ROAD CHRISTIAN BASTI GHY-05

3: THE INCOME TAX OFFICER WARD NO-1 RANGE SILCHAR C-R
BUILDING CIRCUIT HOUSE ROAD SILCHAR ASSAM PIN-788001

4: THE INCOME TAX OFFICER ITO MANTRIBARI ROAD EXTENSION
DHALESWAR AGARTALA TRIPURA PIN-79900

VERSUS

CHYAWAN PRAKASH MEENA B S/O- SH ROOP CHAND MEEENA, R/O- VPO-
SEWA , TEHSIL- GANGAPUR CITY, DIST- SAWAI MADHOPUR (RAJ) 322219
PRESENTLY POSTED DIG (OPS) OF BORDER SECURITY FORCE,
MASIMPUR, SILCHAR , ASSAM

Advocate for the Petitioner : SC, INCOME TAX, MR. S C KEYAL

Advocate for the Respondent : MR. A GOYAL, MR. A CHOUDHURY

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : **24.04.2025**

Date of Judgment & Order : **01.05.2025**

JUDGMENT & ORDER(CAV)

(N. Unni Krishnan Nair, J.)

Heard Mr. S. C. Keyal, learned counsel, appearing on behalf of the appellants. Also heard Mr. A. Goyal, learned counsel appearing on behalf of the sole respondent.

2. The present intra-Court appeal has been instituted by the appellants, herein, assailing the order, dated 03.02.2023, passed by the learned Single Judge in WP(c)404/2023, allowing the same by holding that the petitioner, therein, i.e. sole respondent, herein, was entitled to the benefits accruing to him under the provisions of Section 10(26) of the Income Tax Act, 1961, with further direction to the appellants, herein, to process the request for refund of income tax deducted from the salary of the sole respondent and to remit the same to him, forthwith.

3. The sole respondent, herein, belongs to the Meena Community which is considered as a Scheduled Tribe under the Constitution Scheduled Tribe State Order, 1951, in the State of Rajasthan. The sole respondent was recruited in the Border Security Force in the year 1991 as an Assistant Commandant.

4. The appellants, herein, having proceeded to make deductions towards the payment of income tax from the salary of the sole respondent, herein, the sole respondent by contending that being a member of recognized Scheduled Tribe community, is entitled to the benefits flowing from the provisions of Section 10(26) of the Income Tax Act, 1961, and that such deduction from his salary was not permissible; had approached the income

tax authorities at Silchar and Agartala where he was so posted, seeking refund of the income tax so deducted from his salary in view of the exemption available to him under the provisions of Section 10(26) of the Income Tax Act, 1961. The said income tax deducted from the salary of the sole respondent not having been refunded, he had approached the writ Court by way of instituting a writ petition being WP(c)404/2023, praying for a direction upon the respondent authorities to forthwith refund the income tax deducted from his salary by reckoning that he was entitled to the exemption provided under the provisions of Section 10(26) of the Income Tax Act, 1961.

5. The learned Single Judge upon considering the matter and also following the decision of the Full Bench of this Court in the case of ***Pradip Kr. Teye & ors. v. Union of India & ors.***, reported in **2010(2) GLR 367**, proceeded to allow the said writ petition being WP(c)404/2023, by holding that the petitioner, therein, i.e. sole respondent, herein, was entitled to the benefits accruing to him under the provisions of Section 10(26) of the Income Tax Act, 1961. The learned Single Judge further proceeded to direct the income tax authorities to expeditiously process the request for refund of the income tax so deducted from the salary of the sole respondent and remit the same to him, forthwith.

6. The operative part of the order, dated 03.02.2023, passed by the learned Single Judge in WP(c)404/2023, being relevant, is extracted hereinbelow:

“8. In terms of the provisions of this Section, any member of a Scheduled Tribe as defined in Clause (25) of Article 366 of the Constitution, residing in any of the areas prescribed under Section 10(26), is exempted from payment of income tax. This Court in Pradip Kr. Teye (Supra) had elaborately dealt with this issue and had laid down

the law and had held that the expression under Section 10(26) “residing in any area specified” cannot be given a narrow and restricted meaning to imply that the members of a Schedule Tribe migrating from their places of origin, which happens to fall in one of the areas specified in the said sub-section, to another area although once again falling within the areas specified in the sub-section, would not get the benefit of the exemption under Section 10(26) for exemption from payment of income tax. The relevant paragraphs from the said Judgment are extracted below:

“28. Examined thus, the crucial expression “residing in any area specified” occurring under section 10(26), in our view, cannot be given a narrow and restricted meaning to imply that the members of a Scheduled Tribe migrating from their place of origin, which happens to fall in one of the areas specified in the said sub-section, to another area although once again falling within the areas specified in the sub-section, would not get the benefit of the exemption under section 10(26). If a literal meaning is to be given to the expression “residing in any area specified”, in our view, section 10(26) is capable of producing a result that any member of a Scheduled Tribe irrespective of the fact whether such a Scheduled Tribe is a Scheduled Tribe, in relation to those territories specified in the said sub-section or not, is entitled to the benefit of the said subsection. It is not the case of either the petitioners or the revenue that the Parliament, while enacting section 10(26) intended such result. Therefore, the expression “residing in any area specified” must be interpreted in the context of the said sub-section. The context of the sub-section is that it is a special provision with reference to the specified areas of the country, that is, the areas comprising North East and Jammu & Kashmir of the country, which received a special treatment under the scheme of the Constitution in the various aspects of the application of the Constitution. It may also be worthwhile remembering that even in the matter of reservation of seats either in the Lok Sabha or the various Legislative Assemblies, the Scheduled Tribes of the State of “Assam” are treated exclusively under article 330(3) [330 (3) Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of the Scheduled Tribes in the said autonomous districts bears to the total population of the State.] and 332(1) [332 (1) Seats shall be reserved for the Scheduled Castes and Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam, in Nagaland and in Meghalaya, in the Legislative Assembly of every State.] . Therefore, in our view, the expression “residing in any area specified”, occurring under section 10(26) is used by the Parliament synonymously with the expression “in relation to any area specified” under the said sub-section. In our view, the expression “residing in any area specified” is not meant to be restrictive of the benefit provided under the said sub-section in the case of members of the Scheduled Tribes, who, otherwise, fall within the scope of the said section, but migrating to one of the places specified in the said subsection but only descriptive of the limited number of Scheduled Tribes, which are residents of the areas specified under section 10(26) of the Income-tax Act.

29. It may also be kept in mind while interpreting the said sub-section that the benefit contemplated therein is sought to be given to a specific class of assesseees with reference to the income arising or accruing out of a specified area, i.e., areas specified in section 10(26)(a) or certain sources specified in section 10(26)(b). While clause (a) of section 10(26) restricts the benefit to the incomes arising or accruing out of various sources, such as, salaries, house properties etc., (which are some of the heads of income) so long they arise or

accrue within one of the territories/areas specified in the said sub-section, under clause (b) of section 10(26), such a restriction, regarding the territory (with reference to which the income arising out of dividend or interest on securities arise), is not applicable.

30. *Yet another reason to reject the interpretation sought to be placed on the said sub-section by the revenue is the history of the sub-section. It is already noticed earlier, originally the provision sought to exclude the employees of the government from the purview of the benefit conferred by the said sub-section, which was found to be unconstitutional by the Supreme Court as creating an unreasonable classification among the Scheduled Tribes. The Supreme Court in S.K. Dutta (supra) held such a classification to be illegal. At para-14 of the said judgment the Supreme Court held as follows:—*

“It was the contention of the learned Solicitor-General that exemption from income-tax was given to members of certain scheduled tribes due to their economic and social backwardness; it is not possible to consider a government servant as socially and economically backward and, hence, the exemption was justly denied to him. According to the Solicitor-General, once a tribal becomes a government servant he is lifted out of his social environment and assimilated into the forward sections of the society and, therefore, he needs no more any crutch to lean on. This argument appears to us to be wholly irrelevant. The exemption in question was not given to individuals either on the basis of their social status or economic resources. It was given to a class. Hence, individuals as individuals do not come into the picture. We fail to see in what manner the social, status and economic resources of a government servant can be different from that of another holding a similar position in a corporation or that of a successful medical practitioner, lawyer, architect, etc. To over-paint the picture of a government servant as the embodiment of all power and prestige would sound ironical today his position in the society to put it at the highest is no higher than, that of others who in other walks of life have the same income. For the purpose of valid classification what is required is not some imaginary difference but a reasonable and substantial distinction, having regard to the purpose of the law.”

31. *Once it is held that such a classification of the government servants from the scope of section 10(26) is violative of article 14 to say that a government servant or the employees of the “State” (within the meaning of article 12) loses the benefit on the mere accident of his being posted out of his place of origin but within the areas specified under section 10(26) and entitled to the benefit of the said section if by an accident, he is posted in the same area of his origin. Such an interpretation, in our view, which is dependent upon pure accident and exigencies of the service, would lead to wholly arbitrary results and undesirable consequences. We, therefore, find no substance in the submission made by the revenue. We are of the opinion that the case NEEPCO Tribal Employees’ Welfare Association (supra) is wrongly decided and we approve the decision of this court Dipti Doley Basumatary (Supra) to the extent it is consistent with the present judgment.”*

9. *Having perused the Judgment of this Court rendered by a full Bench in Pradip Kr. Taye (Supra) as well as in view of the Tax Exemption Certificates dated 10.12.2020*

and 21.04.2021 issued by the respondent department; this Court is of the view that the prayers made by the petitioner will have to be allowed.

10. The petitioner is indeed entitled to the benefits accrued under Section 10(26) of the Income Tax Act, 1961. Accordingly, Mandamus is hereby issued to the respondent, more particularly, the Commissioner of Income Tax (TDS) as well as the concerned Income Tax Officer of the ward to expeditiously process the request for refund of income tax deducted from the salary of the petitioner and remit to the petitioner forthwith."

7. Mr. Keyal, learned counsel for the appellants, herein, has submitted that the sole respondent, herein, being a member of a community recognized as Scheduled Tribe for the State of Rajasthan and the State of Rajasthan not being identified as a specified area under the provisions of Section 10(26) of the Income Tax Act, 1961; he would not be entitled to claim the benefit of income tax exemption.

8. Mr. Keyal, learned counsel, has further submitted that the sole respondent, herein, did not satisfy the first condition for claiming the exemption of income tax under the provisions of Section 10(26) of the Income Tax Act, 1961, and the learned Single Judge had failed to appreciate the said aspect of the matter while drawing his conclusions in the order, dated 03.02.2023, passed in WP(c)404/2023.

9. Mr. Keyal, learned counsel, has submitted that the decision of the Full Bench of this Court in the case of ***Pradip Kr. Taye & ors.***(supra), would have no application in the facts arising in the present proceeding.

10. In the above premises, Mr. Keyal, learned counsel, appearing for the appellants, has submitted that the impugned order, dated 03.02.2023,

passed by the learned Single Judge in WP(c)404/2023, would mandate an interference from this Court.

11. Per contra, Mr. Goyal, learned counsel appearing for the sole respondent, herein, by referring to the provisions of Section 10(26) of the Income Tax Act, 1961, has contended that the same was considered by the Full Bench of this Court in the case of **Pradip Kr. Taye & ors.**(supra), and had reached a conclusion that even a government employee on being posted out of his place of origin to a place falling within the area specified under the provisions of Section 10(26) of the Income Tax Act, 1961, would be entitled to the exemption flowing therefrom.

12. Mr. Goyal, learned counsel for the sole respondent, herein, has further submitted that the learned Single Judge had drawn his conclusions in the matter vide order, dated 03.02.2023, in WP(c)404/2023, by relying upon the decision of the Full Bench of this Court in the case of **Pradip Kr. Taye & ors.**(supra), and accordingly; the said decision would not mandate any interference from this Court.

13. We have heard the learned counsels appearing for the parties and also perused the materials available on record.

14. It is not disputed that the sole respondent, herein, belongs to a notified Scheduled Tribe community of the State of Rajasthan. The respondent, during his service career, had been posted out of the State of Rajasthan and had also rendered service in areas specified under the provisions of Section 10(26) of the Income Tax Act, 1961.

15. Although Mr. Keyal, learned counsel for the appellants, herein, had, earlier in the course of consideration of the present proceeding, raised an issue as to whether the sole respondent, herein, would be entitled to claim such income tax exemption for the period he was posted at Silchar, Assam; the said position was clarified by Mr. Goyal, learned counsel for the sole respondent, by contending that the respondent is not claiming income tax exemption for the period he was posted at Silchar, Assam, which is not a specified area under the provisions of Section 10(26) of the Income Tax Act, 1961, but, the respondent, herein, is claiming income tax exemption relating to the period he was posted at Agartala, Tripura, which is a specified area under the provisions of Section 10(26) of the Income Tax Act, 1961. The said aspect of the matter was recorded by this Court in its order, dated 20.02.2024, passed in the present proceeding.

16. In view of the said position and it not being disputed that the sole respondent, herein, while being posted at Agartala, Tripura; was so posted in a specified area in terms of the provisions of Section 10(26) of the Income Tax Act, 1961, it is to be held that he would be entitled to the benefits of exemption from income tax flowing from the provisions of Section 10(26) of the Income Tax Act, 1961.

17. The above aspect of the matter, is no longer *res integra*, and has been laid to rest by the decision of the Full Bench of this Court in the case of **Pradip Kr. Taye & ors.**(supra).

18. The learned Single Judge having drawn his conclusions in the matter after appreciating the decision of the Full Bench of this Court in the case of

Pradip Kr. Taye & ors.(supra); the conclusions drawn by the learned Single Judge in the order, dated 03.02.2023, in WP(c)404/2023, to the effect that the respondent was entitled to the benefits accruing to him under the provisions of Section 10(26) of the Income Tax Act, 1961 and that, he would be entitled to the exemption from income tax flowing therefrom; we are of the considered view that given the facts and circumstances involved in the matter as well as the Scheduled Tribe status of the sole respondent, herein, the order, dated 03.02.2023, passed by the learned Single Judge in WP(c)404/2023, would not mandate an interference from this Court.

19. Accordingly, the directions passed by the learned Single Judge, vide order, dated 03.02.2023, in WP(c)404/2023, for refund of the income tax deducted from the salary of the sole respondent, herein, cannot also be said to be erroneous.

20. In view of the above discussions, we are of the considered view that the instant writ appeal is devoid of any merit and the same, accordingly, stands dismissed. However, there shall be no order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant