

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. NO. 478/2002

WEDNESDAY, THIS THE 6th DAY OF OCTOBER, 2004

C O R A M

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN  
HONB'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

M.K. Antony  
Notice Server  
Office of the Additional Commissioner  
of Income Tax, Range-2  
Aayakar Bhavan  
Manachira, Calicut.

Applicant

By Advocate M/s P. Santhoshkumar & TA Rajan

Vs.

1. Union of India represented by  
the Secretary to Government of India,  
Ministry of Finance  
New Delhi.
2. The Assistant Commissioner of Income Tax  
Circle-1(2), Range-I  
Central Revenue Building  
I.S. Press Road,  
Ernakulam.
3. The Additional Commissioner of Income Tax  
Range-2, Aayakar Bhavan  
Manachira, Calicut.

Respondents

By Advocate Mr. C. Rajendran, SCGSC

The Application having been heard on 22.7.2004 the Tribunal delivered the following on 6.10.2004.

O R D E R

HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

The matter raised in this Application is identical with that raised in O.A. No.75 of 2002 which has already been disposed of by this Tribunal with the following observations:

"We have gone through the pleadings and materials placed on record and have heard the learned counsel on either side. An identical issue was considered by this Tribunal in O.A. NO. 74/2002. It was noticed that the undertaking given in that case on 23.10.1997 similar to Annexure R-3 in this case did not cover the wrong payment made while the pay was refixed in the upgraded scale. Since the

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undertaking does not cover the second fixation of pay and grant of two advance increments which was not really called for and the applicant not being responsible for the alleged overpayment in view of the decision of the Apex Court in Shyam Babu Verma & Others Vs. Union of India & Others (1994 2 SCC 521) this Bench held that recovery was not justified. The facts are identical. The pay fixation which resulted in overpayment was not covered by the undertaking given by the applicant in this case. The undertaking was in regard to fixation of pay on implementation of the Vth Central Pay Commission report. The present overpayment arose on account of fixation of pay in the scale of Rs. 3050-4590 regarding which the applicant had not given any undertaking. Therefore, we respectfully follow the decision of this Tribunal in O.A. NO. 74/2002 and hold that the respondents are not entitled to recover the overpayment in this case.

2. Both of us constituted the bench that had disposed of the matter in the above line. In pursuance of the same line, we set aside Annexure A-1 order and allow the Application directing the respondents not to recover the overpayment. No order as to costs.

Dated 6.10.2004.

*H.P. Das*  
H.P. DAS  
ADMINISTRATIVE MEMBER

*A.V. Haridasan*  
A.V. HARIDASAN  
VICE CHAIRMAN

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