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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.335/97

Date of order: 5.10.90

Kashi Prasad Joshi, S/o late Shri D.P.Joshi, R/o 1C/56,
Opposite Head Post Office street, Shashtri Nagar, Jaipur.

...Applicant.

Vs.

1. Union of India, through Secretary to the Govt. of India, Ministry of Finance (Deptt. of Revenue), New Delhi.
2. Chief Commissioner of Income Tax, Rajasthan, Jaipur.
3. Central Board of Direct Taxes, Principal Chief Controller of Accounts, 9th Floor, Lok Nayak Bhawan, Khan Market, New Delhi.
4. Zonal Accounts Officer, CBDT, NCR, Building, Near Statue Circle, Jaipur.

...Respondents.

Mr.M.S.Gupta - Counsel for the applicant.

Mr.N.K.Jain - Counsel for the respondents.

CORAM:

Hon'ble Mr.Ratan Prakash, Judicial Member.

PER HON'BLE MR.RATAN PRAKASH, JUDICIAL MEMBER.

Applicant herein Shri Kashi Prasad Joshi has sought a direction against the respondents to refund an amount of Rs.8496/- of LTC which has been wrongly deducted from the payment of Gratuity amount with interest @ 12%. He has further prayed for the payment of a sum of Rs.35,968 as interest on post retirement benefits.

2. I heard the learned counsel for the parties and have examined the record.

3. The respondents have opposed the claim on the ground that the amount of Rs.8496 has been rightly deducted by them after it came to the notice of the answering respondent through an audit objection that it has been wrongly paid to the applicant earlier. It is stated by the respondents that by virtue of O.M No.31011/9/86-Establishment(A) dated 17.8.1987 a clarification was made by the concerned Ministry that journeys by chartered buses shall be

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admissible for LTC only in those cases where the tour is wholly operated and conducted by the ITDC/State Tourism Development Corporation either by their own buses or the buses taken on hire from outside. The applicant having travelled in a Matador arranged by Haridwar Travels, Haridwar, which was not owned or hired by ITDC or State Tourism Development Corporation, hence, the aforesaid deduction made by the respondents cannot be faulted.

4. The applicant in support of his claim to get the refund of the aforesaid amount of Rs.8496, has filed an acknowledgement receipt dated 31.5.93 issued by "Hardwar Travels, Railway Road, Hardwar" under Franchise of U.P.State Tourism Development Corporation Ltd, Lucknow (Annx.A2).

The relevant portion of the aforesaid OM dated 17.8.87 (Annx.R1), reads as under:

2. This department has been receiving references seeking clarification regarding admissibility of LTC claims, when the journeys are performed by chartered buses either owned or hired by ITDC/State Tourism Corporations. It is once again clarified that the journeys by the chartered buses shall be admissible for LTC only in those cases where the tour is wholly operated and conducted by the ITDC/State Tourism Development Corporations, either by their own buses or buses taken on hire from outside. It should, however, be clearly certified by the ITDC/State Tourism Development Corporation concerned that the tour was actually conducted/operated by them and not by any private party/person."

From a perusal of the contents of para 2 of this OM, it is explicit that the LTC claim would be admissible only in those cases where the tour/journey is wholly operated and conducted by ITDC/State Tourism Development Corporation, either by their own buses or buses taken on hire from outside. It further specifies that it should also be certified by the ITDC/State Tourism Development Corporation concerned that the tour was actually conducted/operated by them and not by any private party/person (emphasis supplied).

5. From a perusal of the receipt annexed with the OA and filed by the applicant as at Annx.A2, what is made out is that 'Haridwar Travels, Haridwar' is a private travel agency which is said to be


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running under the franchise of the UP State Tourism Development Corporation Ltd, Lucknow. The word 'franchise' has been defined in the Chambers English Dictionary (re-printed in 1991-92) as under:

"a commercial concession by which a retailer is granted by a company the generally exclusive right of retailing its goods or providing its services in a specified area, with use of the company's expertise, marketing, trade mark, etc."

As per this definition franchise is understood to mean a permission /concession which is given to a retailer by a company to exercise generally an exclusive right in retailing its goods or providing its services in a specified area. In the instant case, as is evident from the acknowledgment produced by the applicant as at Annx.A2, Hardwar Travels, Hardwar, appears to have been given a right to ply its vehicles exclusively within the specified jurisdiction of the UP State Tourism Development Corporation Ltd. This acknowledgment does not disclose anywhere that the vehicle No.DL 1C 4498 by which the applicant with his family is disclosed to have travelled from Haridwar to Gangotri and Badrinath; is either the vehicle of the UP State Tourism Development Corporation or a chartered vehicle taken on hire from outside and that the tour is wholly operated and conducted by the UP State Tourism Development Corporation. There is also no certification in this acknowledgement as at Annx.A2, by the UP State Tourism Development Corporation to the effect that the tour or the visit made by the applicant with his family was actually conducted and operated by the UP State Tourism Development Corporation and not by any private party/person. Both the conditions specified in the aforesaid OM dated 17.8.87 having been not satisfied in the instant case, it cannot be said that the action of the respondents in deducting an amount of Rs.8496 from the amount of his gratuity has been uncalled for or illegal. The claim in this regard made by the applicant therefore is not tenable and is disallowed.

6. The other claim of made by the applicant to pay interest of



Rs.35,968 on post retiral benefits is also not borne out of the facts which have emerged from the pleadings of the parties. The respondents have clearly indicated in their reply that the applicant retired on 31.3.96, his GPF amount of Rs.3,44,340/- was paid on 21.5.96, i.e. within a period of 1 month 21 days; the amount of Leave Encashment for Rs.46,649 was also made on 28.5.96 and the payment on account of CGEIS was made in September 1996. It has further been explained by the respondents that since the applicant did not give his consent for finalisation of his case on the ground that O.A No.245/95 (K.P.Joshi Vs. Union of India & Ors. decided on 11.10.96) was pending and the matter at that time was subjudice before the Tribunal here, the payment of gratuity and commutation of pension and pension arrears could not be made earlier. But no sooner a decision was given by the Tribunal, a final decision on implementation was taken by the Central Board of Direct Taxes on 7.2.97 which was communicated to the Zonal Accounts Officer on 25.2.1997 and soon thereafter; according to the respondents; in April 1997 itself, the payment was made to him. There remains, thus, no doubt that the respondents have not delayed the aforesaid payments to the applicant. Whatever short delay there has been, it has been on account of the circumstances explained by the respondents above. The claim of the applicant therefore to grant interest on post retiral payment is without any substance and is also rejected.

7. In view of the above, there being no merit in this O.A. This O.A is dismissed with no order as to costs.



(Ratan Prakash)

Judicial Member.