

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

**OA NO.4228/2016  
MA NO.3788/2016**

NEW DELHI THIS THE 21<sup>st</sup> DAY OF AUGUST, 2018

**HON'BLE MR. PRADEEP KUMAR, MEMBER (A)**

1. V.P. Gupta,  
S/o Late Sh. R.L. Gupta,  
R/o 202-B/1 Gautam Nagar,  
New Delhi-110049.
2. Dr. P.P. Kotwal,  
S/o P.D. Kotwal,  
R/o A2/23, Azad Apartment  
Shri Aurobindo Marg,  
New Delhi.
3. Dr. D.N. Rao,  
S/o Shri Mallanna Mallanna  
Donthamsetty,  
R/o A1/42, First Floor,  
Sohna Road, Sector-49,  
South City-II, Gurgaon,  
Haryana-122018. ...Applicants

(By Advocate: Mr. Sunil Fernandes)

**VERSUS**

1. Director,  
All India Institute of Medical  
Sciences, Ansari Nagar,  
New Delhi-110029.
2. Department of Personnel & Training  
Ministry of Personnel,  
P.G. and Pensions, North Block,  
New Delhi-110001. ...Respondents

(By advocate: Mr. V.S.R. Krishna)

**:ORDER (ORAL):**

MA No.3788/2016 for joining together is allowed.

Heard learned counsel for the parties.

2. The case relates to certain employees of the AIIMS, who have since retired from service at various points of time. One such employee Shri V.P. Gupta (applicant No.1 in the OA) was working as Registrar and retired from service on 31.01.2012. The grievance of the applicants in the instant OA is that at the time of retirement certain leave encashment was paid to the retiring employees by the AIIMS (Administration). At that time certain TDS was also deducted from this leave encashment.

The counsel for the applicants pleaded that the service conditions of AIIMS employees are same as that of the Central Government employees and accordingly the exemption, under Section 10(10AA)(i) of the Income Tax Act, is applicable to AIIMS employees also. Therefore, the leave encashment is exempted from deduction of TDS.

3. The applicants pleaded that TDS deduction from leave encashment at retirement time was not warranted in the first place and needs to be refunded. The counsel for the applicants further brought out certain RTI replies received by them from similarly placed organisations like Indian Council of Agricultural

Research, the Indian Council of Medical Research and the Indian Institute of Technology, Delhi etc. support their plea in this regard. These organizations were also created by an Act of Parliament at par with AIIMS. As per the replies submitted under RTI, no TDS was deducted from the retiral dues of their employees.

4. The counsel for the applicants pleaded that such deduction was wrong on the part of the AIIMS (Administration) and needs to be refunded.

5. The counter has been filed by the respondents wherein it has been brought out that the issue under this OA relates to TDS deduction which has since been credited to the Income Tax Account of the concerned applicants and if the same was not deductible, respective applicants can file their Income Tax return and claim refund. Further, this issue relates to the Direct Tax Revenue under Income Tax, which does not fall within the purview of the Tribunal, which deals with service matters.

6. The matter has been heard at length. In the instant case, the amount so deducted has been remitted to the Income Tax Department under the respective account of the applicants and it is definitely open to the applicants to claim refund from the Income Tax Department.

Further this issue relates to interpretation of the Income Tax Act, wherein applicability of the Rule 10(10AA)(i) or otherwise, has been taken into account by AIIMS as well as other institutions cited. In this regard, the extracts of one letter, which has been written by the AIIMS (Administration) to the applicants vide their letter No.1-25/75(Audit) dated 29.09.2015, are reproduced as under:-

"I am directed to refer to your letter dt.8/9/2015 addressed to Sr. Financial Advisor, AIIMS, New Delhi on the subject mentioned above and to say that MOHFW vide letter No.V-16020/15/2012-ME-I dated 16.12.2013 clarified that the matter has been examined in consultation with Department of Revenue, Min. of Finance vide their note dt.13/11/2013 and the exemption under 10(10 A A)(i) of Income Tax Act 1961 is not available to the employees of AIIMS(Copy enclosed)".

If the applicants were not satisfied with this decision, they could have agitated their grievances before the appropriate forum.

7. In view of the foregoing, this Tribunal is not the appropriate authority to adjudicate the instant matter. The applicants are directed to approach the correct forum. The OA is disposed of with these directions. No costs.

**(PRADEEP KUMAR)  
MEMBER (A)**

/jk/

