



ALL INDIA BHARAT SANCHAR NIGAM LIMITED RETIRED EXECUTIVES' ASSOCIATION

Central Headquarters

Registered under Societies Registration Act XXI of 1860 vide Govt. of NCT Delhi No. S/RS/SW/1161/2014
[Registered under Pensioners Portal vide DoP&PW letter No. 4(4)/2021-P&PW(H)7311 dated 04.01.2024]
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No. AIBSNLREA/CHQ/2024/42

Dated 14th June 2024

To
Shri Nitin Gupta,
Chairman,
Central Board of Direct Taxes,
New Delhi

Sub: Request for closure of Notices issued under Section 154 claiming additional tax on leave encashment for leave earned during DoT period, case of BSNL absorbed pensioners

Sir,

We seek your kind attention to a persistent issue since the year 2021 wherein CPC Bangalore had issued notice to some BSNL absorbed pensioners demanding paying of additional tax on the plea that that the "order u/s 154 was erroneously taken up for rectification again, whereby full exemption, as claimed in the return, was allowed. As the assessee's claim of exemption, in excess of Rs 3 lakhs, is erroneous and is a mistake apparent from records, the exemption u/s 10(10AA) is restricted to Rs 3 lakhs in this order". After due reply from the taxpayers, these notices have not been cancelled, although the demand for additional tax was not pursued further.

2. BSNL IDA pensioners were serving in Government of India under Department of Telecommunications upto 30.09.2000 and were transferred to and permanently absorbed in Bharat Sanchar Nigam Limited (BSNL) which was formed on 01.10.2000 as per Government of India decision. Thus, they were Central Government Employees up to 30.09.2000. According to the Cabinet decision taken then, the earned leave at the credit of these employees were duly carried forward to BSNL.

3. According to Section 10 (10AA) (i) of IT Act, Leave encashment *at the time of retirement or separation (other than on account of termination)* of a Government Employee

is fully exempt from income tax. However, for the Non-Govt employees, leave encashment in excess of Rs.3,00,000 (Three lakhs) is taxable as per Section 10 (10AA) (ii). Therefore, BSNL had issued guidelines vide No.1001-04/2011-12/Taxation/BSNL/LE/176 dated 04.05.2012 (copy enclosed) stating that:

"1. The full amount received by a retiring absorbed employee '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' under sub-clause (i) of Section 10(10AA), Income Tax Act, 1961, calculated as per the accepted norm adopted for calculating the Amount due for the Government service period, will be eligible for full exemption, on the date of absorption in BSNL from DOT.

2. As per sub clause (ii) of the Section 10(10 AA) of Income Tax Act, 1961, subject to the exemption limit of Rs 300,000/- amount calculated to leave salary drawn by the employee on or after the date of absorption in BSNL (i.e., PSU service) is taxable".

4. Based on the above orders, BSNL has been calculating leave earned in Government service prior to absorption and leave earned after absorption separately and has been deducting TDS accordingly, which reflects in the Form 16 also. All retired BSNL absorbed employees have been submitting ITRs based on these Form 16 only.

5. It is pertinent to point out here that in a similar case of CPC Bangalore claiming tax for the encashment of leave earned during Government service in respect of Mahanagar Telephone Nigam Limited, (MTNL) employees who were permanently absorbed in the PSU came before the INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI in ITA No. 3261/Mum/2018 and the Hon'ble Tribunal had allowed the appeal of the assessee and ordered that

*"I am of the view that as per the provisions of section 10(10AA)(i) of the Act, the assessee is entitled for exemption on the amount of leave encashment of leave earned during the period before absorption in MTNL as per section 10(10AA)(i) of the Act as applicable to Central Govt. because before that date he was employee of Govt. of India that the Central Government. The amount of leave encashment in respect of leave accrued after absorption in MTNL will be governed by the exemption as per section 10(10AA)(ii) of the Act. **I find that the facts are clearly in favour of assessee and for 263 days of leave as on the date of absorption was available to the assessee, which was earned and unutilized from Government service i.e. Central Government and will be governed by 10(10AA)(i) of the Act. The balance 37 days of leave earned is from MTNL and will be governed as per the provisions of section 10(10AA)(ii) of the Act. Accordingly, I allow the appeal of the assessee***

and direct the AO to recompute the exemption proportionately as directed above."

6. Therefore, it is evident that the action by IT department under Section 154 is violative of Section 10 (10AA) (i) of IT Act. All the assesses who received notice on this count had duly submitted their reply mentioning about the BSNL letter cited above and the Income Tax Appellate Tribunal, Mumbai orders referred to in previous paragraph. Although no further action has been taken by the Income Tax authorities, there are instances where the additional tax is recovered wherever the assessee is eligible for refund. Non-closure of the notices continues to be a sword of Damocles hanging over their head with adverse action against them by the IT department at any point of time in the future. This has led to a situation where the concerned assesses are in constant stress.

7. In view of the above facts, we request you to kindly direct the officials in CPC Bangalore to withdraw/close the notices issued in violation of the IT Act and also stop harassing the BSNL pensioners by recovering the alleged additional tax in lieu of refunds due.

With kind regards,

Yours sincerely,



(R.R. Balasubramanian)
General Secretary

Encl: As stated

Copy to: 1. Shri Pankaj Chaudhary,
Minister of State, Finance, Gol
2. Shri V. Srinivas,
Secretary (Pension), DoP&PW

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BHARAT SANCHAR NIGAM LIMITED
[A Government of India Enterprise]

No. 1001-04/2011-12/Taxation/BSNL/LE/196

Dated: 4/05/2012

To
All Heads of Telecom Circles/
Metro Districts/ Maintenance Regions/
Projects/Stores/BRBRAITT/ ALTTC,
All other Administrative Units, BSNL.

Sub.: TDS on Leave encashment amount at the time of retirement-Reg.

Several Telecom Circles, individual employees of BSNL as well as executive associations have sought clarifications relating to deduction of Tax at Source on Leave encashment amount payable at the time of retirement to the BSNL employees.

The subject matter has been examined in Corporate Office and it was decided to refer to our corporate tax consultant for opinion. Keeping in view the opinion of tax consultant relating to TDS on leave encashment, the following guidelines are issued:

1. The full amount received by a retiring absorbed employee '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', under sub-clause (i) of Section 10(10AA), Income Tax Act, 1961, calculated as per the accepted norm adopted for calculating the Amount due for the Government service period, **will be eligible for full exemption, on the date of absorption, in BSNL from DOT.**
2. As per sub clause (ii) of the Section 10(10AA) of Income Tax Act, 1961, subject to the exemption limit of Rs. 300,000/-, amount calculated equivalent to leave salary drawn by the employee on or after the date of absorption in BSNL (i.e., PSU Service) is taxable.
3. Keeping in view the above position,
 - (a) If BSNL absorbed employee already had 300 days standing to his credit at the time of his retirement from Service i.e., his permanent absorption into BSNL, the entire amount of leave encashment is eligible for full exemption under section 10(10AA) sub clause (i) of Income Tax Act, 1961, at the time of payment on superannuation /retirement etc. of the employees.
 - (b) If an absorbed employee has less than 300 days standing to his credit at the time of his retirement from Government Service i.e., his permanent absorption into BSNL, leave encashment amount for the balance period (**not exceeding 300 days in total as prescribed**) subject to the exemption limit of Rs. 3,00,000/- will be taxable

under sub clause (ii) of section 10(10AA) of Income Tax Act, 1961, at the time of payment on superannuation /retirement etc. of the employees.

4. Taking into consideration the above guidelines,

(a) The earned leave account of Government Service at their credit as on the date of permanent absorption into BSNL is to be calculated proportionately as per service records and to allow the full exemption upto 300 days on the date of superannuation/retirement etc. as an employee of the Central Government under sub clause (i) of section 10(10AA) of Income Tax Act, 1961.

(b) If leave encashment at credit is less than 300 days at the time of absorption, the balance leave earned during BSNL (PSU) service will be taxable subject to exemption limit of Rs. 3,00,000/- under section 10(10AA) sub clause (ii) of Income Tax Act, 1961, at the time of superannuation/retirement etc.

5. For directly recruited employees by BSNL on or after 1/10/2000, the TDS on leave encashment will be made as per Section 10(10AA) sub clause (ii) i.e., leave encashment amount exceeding Rs. 3,00,000/- (which is exempted) is taxable.

All the Heads of offices/DDOs are requested to ensure that the TDS is regulated as above before making the payment of Leave Encashment.

This is issued with the approval of competent authority.



(K Jothi)

DGM (Taxation)