

WA 572/2005

BEFORE

THE HON'BLE MR JUSTICE D. BISWAS, CHIEF JUSTICE (ACTING)

THE HON'BLE SMT. JUSTICE ANIMA HAZARIKA

WRIT APPEAL NO.572 OF 2005

WRIT APPEAL NO.573 OF 2005

WRIT APPEAL NO.574 OF 2005

AND

WRIT APPEAL NO.7 OF 2006

IN WRIT APPEAL NO.572 OF 2005

Smti Dipti Doley Basumatary,
Power Grid Corpn of India Ltd.
Old A.P. Secretariat Building
Military Hospital Road,
Shillong - 793 001.

& &.. APPELLANT

- Versus -

1. UNION OF INDIA

Represented by its Secretary (Finance);
Government of India,
New Delhi - 110 001.

2. The Chairman, Central Board of Direct Taxes,
New Delhi - 110 001.

3. The Secretary, Central Board of Direct Taxes,
New Delhi - 110 001.

4. The Chief Commissioner of Income Tax,
Aaykar Bhawan, M.G. Road,
Shillong - 793001.

5. The Commissioner of Income Tax,
Aaykar Bhawan, M.G. Road,
Shillong - 793 001

6. The Commissioner of Income Tax (Appeals); Aaykar Bhawan, M.G. Road,
Shillong - 793 001.

7. The Income Tax Officer,
Ward - 3, Aaykar Bhawan,
M.G. Road, Shillong - 791 001

& &.. RESPONDENTS

8. The Deputy General Manager (Finance)
Power Grid Corporation of India Ltd.
Regional Head Quarters,
Old Arunachal Pradesh Secretariat Bldg,

Shillong -01.

&..PROFORMA RESPONDENTS

IN WRIT APPEAL NO.573 OF 2005

NEEPCO Tribal Employee's Welfare Association, Shillong Represented by its Executive Member, Shri Dhrubajyoti Mushahary, having its registered Office at Brook Land, New Colony, Shillong - 793003, in the District of East Hills Meghalaya.

& &.. APPELLANT

- Versus -

1. UNION OF INDIA
Represented by its Secretary Finance;
Government of India,
New Delhi - 110 001.
2. The Chairman,
Central Board of Direct Taxes,
New Delhi - 110 001.
3. The Secretary,
Central Board of Direct Taxes,
New Delhi - 110 001.
4. The Chief Commissioner of Income Tax,
Aaykar Bhawan, M.G. Road,
Shillong - 793001.
5. The Commissioner of Income Tax,
Aaykar Bhawan, M.G. Road,
Shillong - 793 001
6. The Income Tax Officer (TDS),
Ward - 3, Aaykar Bhawan,
M.G. Road, Shillong - 791 001

& &.. RESPONDENTS

7. The Chairman & Managing Director,
NEEPCO LTD. Brook Land Compound,
Lower New Colony
Laitumkhrah, Shillong - 793003.
8. The Director (Finance)
NEEPCO Ltd., Lower New Colony
Shillong - 793 003.
9. The Dy. Manager (Finance) Bills,
NEEPCO Ltd., Lower New Colony,
Shillong - 793003.

&..PROFORMA RESPONDENTS

IN WRIT APPEAL NO.574 OF 2005

Shri Adhu Kumar Basumatary,
Power Grid Corpn of India Ltd.
Old A.P. Secretariat Building,
Military Hospital Road,
Shillong - 793001.

& &.. APPELLANT

- Versus -

1. UNION OF INDIA
Represented by its Secretary (Finance);
Government of India,
New Delhi - 110 001.
2. The Chairman, Central Board of Direct Taxes,
New Delhi - 110 001.
3. The Secretary, Central Board of Direct Taxes,
New Delhi - 110 001.
4. The Chief Commissioner of Income Tax,
Aaykar Bhawan, M.G. Road,
Shillong - 793001.
5. The Commissioner of Income Tax,
Aaykar Bhawan, M.G. Road,
Shillong - 793 001
6. The Commissioner of Income Tax (Appeals); Aaykar Bhawan, M.G. Road,
Shillong - 793 001.
7. The Income Tax Officer,
Ward - 3, Aaykar Bhawan,
M.G. Road, Shillong - 791 001

& &.. RESPONDENTS

8. The Deputy General Manager (Finance)
Power Grid Corporation of India Ltd.
Regional Head Quarters,
Old Arunachal Pradesh Secretariat Bldg,
Shillong -01.

&..PROFORMA RESPONDENT

IN WRIT APPEAL NO.7 OF 2006

Bongaigaon Refinery & Petrochemicals Limited Tribal Employees' Welfare Associati
on, an Association duly registered of the Tribal Employees of Bongaigaon Refiner
y & Petrochemicals Limited having its office situated at P.O. Dhaligaon in the D

istrict of Chirang, Assam, represented by its President, Shri Ajit Kumar Brahma,
resident of Dhaligaon in the District of Chirang, Assam.

& &.. APPELLANT

- Versus -

1. UNION OF INDIA
Represented by its Secretary (Finance);
Government of India,
New Delhi - 110 001.
2. The Chairman, Central Board of Direct Taxes,
New Delhi - 110 001.
3. The Secretary, Central Board of Direct Taxes,
New Delhi - 110 001.
4. The Commissioner of Income Tax,
Saikia Commercial Complex,
Sreenagar, G.S. Road, Guwahati.
5. Additional Commissioner of Income Tax, Range Bongaigaon,
Bongaigaon, Assam.
6. The Income Tax Officer,
Ward No.1, Bongaigaon in the District of Bongaigaon, Assam.
7. The Income Tax Officer,
Ward No.2, Bongaigaon in the
District of Bongaigaon, Assam.
8. The Chief Manager (P&A),
Bongaigaon Refinery & Petro-chemical Limited, Bongaigaon in the district of Chir
ang, Assam.

& &.. RESPONDENTS

P R E S E N T

THE HON'BLE MR. JUSTICE D. BISWAS, CHIEF JUSTICE (ACTING)
THE HON'BLE SMT. JUSTICE A. HAZARIKA

For the appellants : Mr. S.P. Sharma,
Mr. S.C. Keyal, Advocates
(In W.A. Nos.572, 573 and 574 of 05)

Dr. A.K. Saraf, Sr. Advocate,
Mr. D. Baruah, Advocate.
(in W.A. No.7 of 2006)

For the respondents : Mr. U. Bhuyan,
Standing Counsel, I.T. Deptt.

Date of Hearing : 01.12.2006
Date of Judgment and Order : 27.02.2007

JUDGMENT AND ORDER

(CAV)

By D. Biswas, J.

This batch of writ appeals arise out of a common Judgment and Order dated 22.6.2005 passed by the learned Single Judge of this Court in Writ Petition (C) No. 200(SH)/2001, Writ Petition (C) No. 340(SH)/2002, Writ Petition (C) No. 14(SH)/2004, Writ Petition (C) No.15(SH)/2004 and Misc Case No.188(SH)/2001.

2. The writ petitions were filed claiming exemption from payment of income tax on the ground that the writ petitioners are members of Scheduled Tribes as defined in Clause-(25) of Article 366 of the Constitution and residing in the area specified either in Part-I or Part-II of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution. Precisely, the dispute raised by the writ petitioners centre around the scope and ambit of Section 10(26) of the Income Tax Act vis- -vis the constitutional provisions. Before the question is addressed, we may recapitulate the factual background of each case in brief.

2. Writ Petition (C) No.200(SH)/2001 has been filed by the NEEPCO Employees Welfare Association, a registered Association, represented by its Organizing Secretary. The Association comprised of members belonging to Scheduled Tribe Community serving under the NEEPCO. They have been enjoying the benefits of tax exemption envisaged under Section 10(26) of the Income Tax Act by virtue of their status as members of the Scheduled Tribe Community under Article 366(25) while they were posted within the specified areas mentioned in Section 10(26). The Income Tax Officer (TDS), Shillong by the impugned letter dated 29.6.2001 instructed the Director (Finance), NEEPCO Limited, Shillong to start deduction of income tax under Section 192 with effect from 1.4.2001 from the salary bills of the members of the petitioner Association for the reason that they are ineligible for exemption under Section 10(26) of the Act. The reason for such a direction is that the member of any scheduled community coming from outside the Sixth Schedule Area is not exempted from paying taxes under Section 10(26). Consequent thereupon, the concerned authority of NEEPCO by the letter dated 20.7.2001 called upon the members of the petitioner Association to furnish exemption certificates from the income tax authorities for calculation and deduction of income tax. The Income Tax Officer, Ward-3, Shillong by the impugned letter dated 7.8.2001 informed the NEEPCO authority that a member of a Scheduled Tribe Community who is not ordinarily residing in the State of Nagaland, Manipur, Tripura, Arunachal Pradesh, Mizoram or any area specified in Part-I or Part-II of the table appended to paragraph 20 of the Sixth Schedule of the Constitution will not be eligible for exemption under Section 10(26) of the Act even though he may presently reside and derive income from any of the States or areas mentioned therein.

3. The petitioner in W.P.(C) No.340(SH)/2002 is also a member of the Scheduled Tribe recognized in the State of Assam. She is also aggrieved by the impugned notice dated 23.7.2002 issued under Section 142 of the Income Tax Act

directing her to file the return of her income. Her claim is that she is a member of the Kachari community in the State of Assam which is recognized as a Scheduled Tribe under the provisions of the Constitution.

4. The petitioner in W.P.(C) No.14(SH)/2004 was serving as a Deputy Manager in the Power Grid Corporation of India, Shillong. She belongs to Miri (Mishing) tribe which is recognized scheduled tribe in the State of Assam. Her application for tax exemption certificate was rejected and, consequent thereupon, her employer started deducting tax at source from her salary compelling her to file her return. She filed her return for the year ending 31.3.1999 claiming a refund of Rs.13,064/-. The claim has been refused by the Assessing Officer by the order dated 7.8.2000 and further demand was raised. Being aggrieved, she preferred an appeal to the Commissioner of Income Tax (Appeals), yet to be disposed of.

5. The petitioner in W.P.(C) No.15(SH)/2004 was serving as Manager (Distribution Management Services) in the office of the Deputy General Manager (Finance), Power Grid Corporation, Shillong. He was transferred from Salakati in Kokrajhar District of Assam. He is a member of the Bodo Kachari community which is a recognized scheduled tribe in the State of Assam. The petitioner also had to file his return of income wherein he claimed refund of taxes deducted at source. By the impugned order dated 7.8.2000, the Assessing Officer raised additional demand of Rs.2,846/-. The appeal preferred by the petitioner to the Commissioner of Income Tax (Appeals) was dismissed on 19.8.2003.

6. The question raised above was answered in favour of the Revenue. The learned Single Judge, by the judgment under appeal, dismissed the writ petitions precisely on the following observation :-

37. Having regard to the underlying legislative intent in incorporating the exemption provision in the form of section 10(26) of the Act and the interpretation which section 10(26) of the Act has received the hands of the Apex Court as well as of this Court in the earlier decisions as well as the judicially evolved principles bearing on the relevant aspect of statutory interpretation, I am of the considered view that a person to be qualified for the exemption contemplated in the above provision of the Act has to be essentially a member of a scheduled tribe notified under the Scheduled Tribe Order to be so for the area(s), must be a permanent resident thereof and his income has to accrue from any source located therein. It is only if the above three conditions coexist that the benefit envisaged under the above provision of the Act would be available. The interpretation provided to section 10(26) of the Act by the department and other authorities to the contrary as is sought to be relied upon on behalf of the petitioners, in view of the judicial determination made in N Takim Roy Rymbai, supra, Dr. Curzon J. Momin, supra, as well as above is inconsequential and is of no assistance to the petitioners. The petitioners therefore cannot be adjudged to be eligible for the exemption under section 10(26) of the Act. In the wake of the above, I do not find any merit in the petitions, which are accordingly dismissed. No costs. .

7. It would appear from above observation of the learned Single Judge that there must exist the following three situations under which a person would be entitled to exemption from payment of income tax under the provisions of Section 10(26) of the Income Tax Act :-

- (a) the person concerned has to be a member of the scheduled tribe as defined in clause (25) of Article 366 of the Constitution of India;
- (b) he must reside in any area specified in Part-I or Part-II of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution or in the area

s of Arunachal Pradesh, Manipur, Nagaland and Tripura or in other areas/regions as mentioned in sub-section (26) of Section 10 of the Income Tax Act; and
(c) the income must accrue or arise to him from any source in such area(s) or by way of dividend or interest on securities.

8. There is no dispute with regard to the above proposition culled out from the provisions of the Income Tax Act read with the definition of Scheduled Tribes in Clause (25) of Article 366 of the Constitution. Dr. A.K. Saraf, learned senior counsel argued that the writ petitioners are members of the Scheduled Tribe Community as notified under Article 342 and they are serving in the State of Meghalaya which is an area specified in Table appended to Sixth Schedule. Therefore, by virtue of their status as members of the Scheduled Tribe, they are entitled to the benefit of exemption under Section 10(26) of the Income Tax Act. Mr.S.P. Sarma, learned counsel for the other group of writ petitioners also advanced identical argument.

9. Mr. U. Bhuyan, learned counsel for the Revenue argued at length in support of the stand of the Revenue that member of the Scheduled Tribe residing outside the areas in relation to which the tribe he belongs to has been notified as Scheduled Tribe is not entitled to exemption from payment of income tax under Section 10(26).

10. There is no dispute that the writ petitioners in all the writ petitions belong to Scheduled Tribe Community as notified under Article 342 in relation to their respective areas. Going by the interpretation of the law as above, all of them would have been entitled to exemption had they been residing in their respective areas with income accruing or arising from any source in such areas. But the writ petitioners are residing in the State of Meghalaya, and in Bodo land areas outside the area other than the area in relation to which the tribe they belong to have been notified as Scheduled Tribe by the respective State Government of such area. Problem cropped-up with them when the Revenue instructed their employers to ensure deduction of income tax under Section 192 with effect from 1.4.2001 from the salary bills.

11. We have given our anxious consideration to the submissions advanced by the learned counsel for the parties. Before the controversy is addressed, we may quote herein below the relevant provisions of the Constitution as well as the Act :-

Article 366. Definition - In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say -

& & & &

(25) Scheduled Tribes means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purpose of this Constitution.

Section 10 : In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included -

& & & &

(26) in the case of a member of a Scheduled Tribe as defined in clause (25) of Article 366 of the Constitution, residing in any area specified in Part I or Part II of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution or in the States of Arunachal Pradesh, Manipur, Mizoram, Nagaland and Tripura or in the areas covered by Notification No.TAD/R/35/50/109, dated the 23rd February, 1951, issued by the Governor of Assam under the proviso to sub-paragraph (3) of the said paragraph 20 (as it stood immediately before the commencement of

f the North Eastern Areas (Reorganisation) Act, 1971 (18 of 1971)], [or in the Ladhakh region of the State of Jammu and Kashmir] any income which accrues or arises to him,-

- (a) from any source in the areas, or States aforesaid, or
- (b) by way of dividend or interest on securities: .

12. As already noticed hereinabove, the writ petitioners in all the writ petitions are members of the Scheduled Tribe notified by their respective States. There is no controversy with regard to their status. Some of them are presently residing in the State of Meghalaya, comprising of Khasi Hills, Jaintia Hills and Garo Hills Districts, incorporated in Part-II of the table to paragraph-20 of the Sixth Schedule. Others are residing in the Bodoland areas in Assam. Therefore, they are residing in tribal areas other than the tribal areas in relation to which their respective tribes has been declared as Scheduled Tribe. Obviously, they cannot ipso facto carry the status conferred upon them in their own areas to the areas where they are presently living. They would, however, be entitled to exemption from payment of income tax if their respective tribe has also been notified as Scheduled Tribe in the State of Meghalaya and in Bodoland in relation to the areas where they are presently residing.

13. All the writ petitioners are transferred from different areas mentioned in the Table to paragraph-20. Therefore, their residence in the State of Meghalaya and in Bodoland cannot be construed to be 'fleeting'. Question would have been altogether different had their stay been casual, passing or purely temporary. The word residing occurring in Section 10(26) cannot be given restricted interpretation confining the benefit of exemption only to the local members of the Scheduled Tribes. We are unable to hold that the words residing connotes permanent residence relatable to the concept of domicile. The benefit of exemption is given to the members of the Scheduled Tribe for economic advancement of the tribal areas vis- -vis financial benefit to the individuals. Therefore, a very casual or passing presence of a person would be incompatible with the legislative intent. But so far the writ petitioners are concerned, they have been residing in the State of Meghalaya, and in Bodoland areas in connection with their services. They cannot shift their residence at their sweet will. Therefore, their presence in the State of Meghalaya, and in Bodoland cannot be said to be passing so as to exclude them from the benefit of Section 10(26).

14. From above discussion, it can be concluded that a member of a Scheduled Tribe notified in any tribal areas as mentioned in the Table to Paragraph-20 of the Sixth Schedule will be entitled to the benefit of exemption under Section 10(26) of the Income Tax Act provided- (a) he is residing in any other tribal area as described in the Table to Paragraph-20; (b) the income which accrues to him must arise from any source in such area; and (c) the tribe to which he belongs is also recognized as a Scheduled Tribe in the other tribal area where he is residing in connection with his avocation.

15. Consequent upon above discussion, all the writ appeals are disposed of with modification of the common judgment with direction to the Revenue to examine the case of the writ petitioners in the light of the observation made in paragraph-14 with reasonable opportunity of hearing to the writ petitioners and to issue exemption certificate to those who fulfill the required criteria.

No costs.